TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~266~~. 75

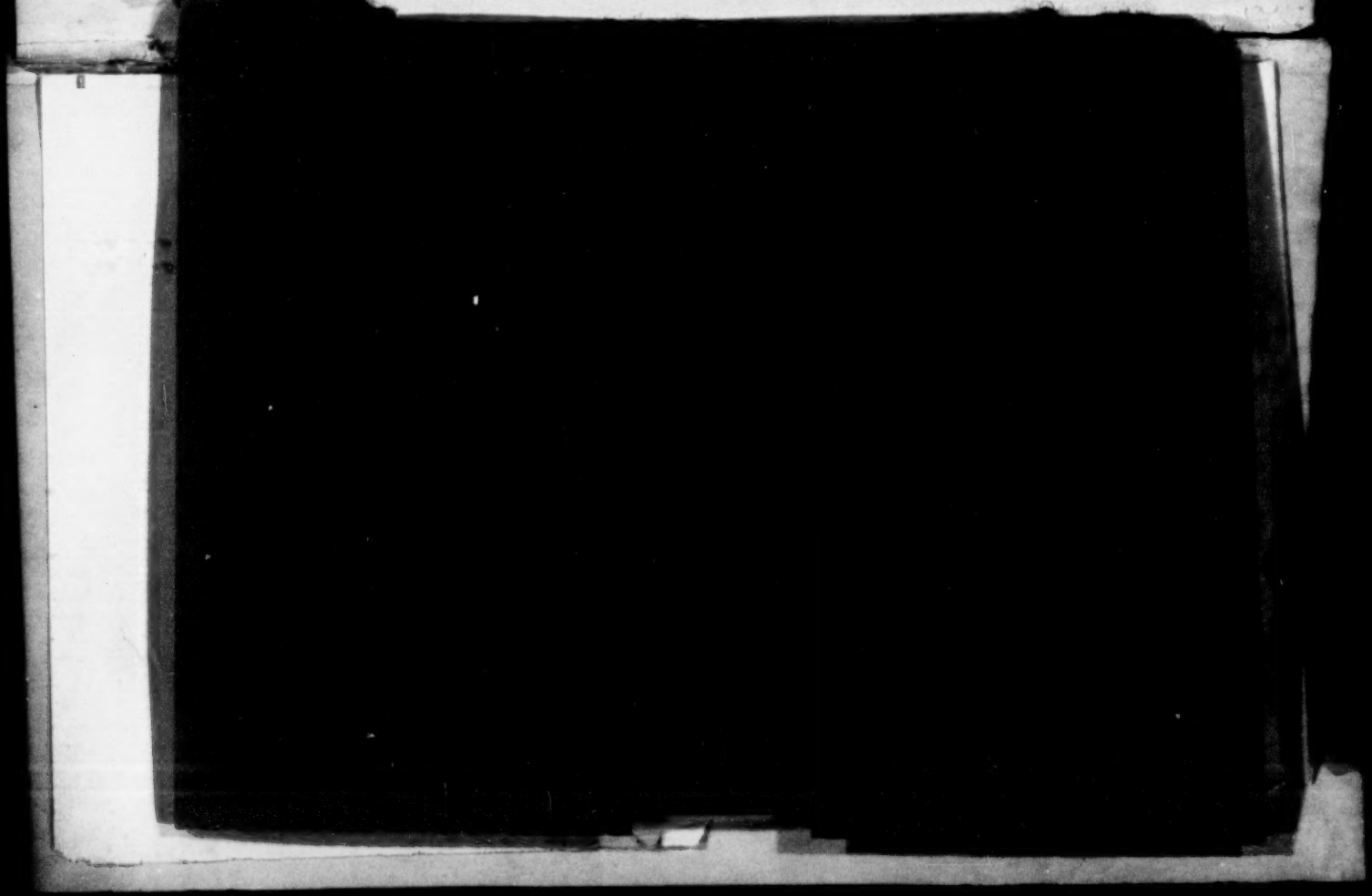
JOHN MARTIN, THOMAS QUAYLE, DAVID TROTTER, AND RALPH H. HARMAN, CLAIMANTS OF THE BARQUE MARIA MARTIN, HER BOATS, ETC., APPELLANTS,

vs.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO, THE BUCKEYE MUTUAL INSURANCE COMPANY, N. D. HUNTER, CHARLES J. HILL, GEORGE C. REED, JOSEPH COGSWELL AND ELIZA A. COGSWELL, WILLIAM PHELPS, ORRIN STAPLES, AND WILLIAM H. BRACE, AND THE MERCHANTS' INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED OCTOBER 6, 1869.



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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a special session of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the first day) of February, A. D. 1869—present, the Honorable Andrew G. Miller, district judge, presiding; Edward Kurtz, clerk of said court; and Cassius Fairchild, marshal for said district—among other, the following proceedings were had, to wit:

THE NORTHERN TRANSPORTATION COMPANY OF Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell & Eliza A. Cogswell, William Phelps, Orrin Staples, & William H. Brace, & the Merchants' Insurance Company, libellants,
vs.
THE BARQUE MARIA MARTIN, HER BOATS, &c., John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants.
} Appeal in admiralty from district court.

Be it remembered that heretofore, to wit, on the 29th day of July, A. D. 1867, a certified copy of record in the case of the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza Cogswell, libellants, against said barque Maria Martin, her boats, &c., was received from the clerk of the district court of the United States for the district of Wisconsin, and filed as follows, to wit:

2 *Transcript of record from dist. court.*

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the eight day) of April, A. D. 1867—present, the Honorable Andrew G. Miller, judge of said court, presiding; Cassius Fairchild, marshal; John M. Miller, clerk—among other, the following proceedings were had, to wit:

THE NORTHERN TRANSPORTATION COMPANY OF Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, & Eliza A. Cogswell, libellants,
vs.
THE BARQUE MARIA MARTIN, HER BOATS, &c., John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants.
} In admiralty.

Be it remembered that heretofore, to wit, on the twelfth day of Novem-

proper look-out properly stationed and vigilantly employed in guarding against the danger of a collision, and had proper signal-lights as required by law properly displayed and brightly burning, and that by reason of the negligence, inattention, & want of proper care, caution, & skill on the part of the master, officers, and crew of the said Maria Martin, the libellants have respectively sustained the damages hereinafter mentioned.

Fifth. That at the time of said collision the said libellants, the Northern Transportation Company of Ohio, being the true and lawful owners of said propeller as aforesaid, were engaged in earning a large amount of freight by the safe carriage & delivery of said cargo to and for its owners & consignees; but said cargo could not be so carried and delivered, and said freight could not be earned, and became a total loss by reason of said collision. That said propeller, with her said cargo, was sunken and submerged as aforesaid by said collision, at a time when her services on the line in which she was engaged were particularly valuable to her owners; that in raising & repairing said propeller and her fixtures, and in raising her said cargo, her owners have expended large sums of money. That said owners, the Northern Transportation
6 Company of Ohio, libellants, in consequence of said collision, have sustained damages, (for no part of which have they ever received any indemnity or compensation), for raising and repairing said propeller & her fixtures, for raising her said cargo, for said propeller's loss of time, for expenses of her master and crew, for loss of freight, and otherwise, to the amount of forty thousand dollars, for which the claim reparation in this suit.

Sixth. That at the time of said collision the said N. D. Hunter, of Chicago, in the State of Illinois, was the owner of a large quantity of carriage springs, seat springs, and other springs of great value, which were then on board said propeller, and a part of her cargo for said voyage; that by reason of said collision, and the careless, negligent, and improper management of the said barque Maria Martin, a portion of said "springs," of the value of ten hundred and eighteen and $\frac{65}{100}$ dollars, were totally lost and destroyed; that on the remainder of said "springs" belonging as aforesaid to said N. D. Hunter, on board said propeller and saved in a damaged condition, the said N. D. Hunter has been compelled to pay as a general average contribution towards salvage expenses incurred in raising said propeller and her cargo, the sum of five hundred and three and $\frac{57}{100}$ dollars. Wherefore the said N. D. Hunter by said collision, and the careless, negligent, and improper management of the barque Maria Martin, has sustained damages to the amount of fifteen hundred and twenty-two and $\frac{22}{100}$ dollars, for which he claims reparation in this suit.

Seventh. That the said libellant Charles J. Hill at the time of said collision was a passenger on board said propeller with his wife and two minor children, and with his baggage consisting of three trunks and their contents on board thereof, and a part of said cargo; that two of said trunks with their contents, together of the value of four hundred and forty-eight and $\frac{10}{100}$ dollars, were by the said collision, and the careless, negligent, unskillful, and improper management of said Maria Martin, totally lost; that one of said trunks has been recovered since said collision from the wreck of said propeller, but the contents thereof, at the time of said recovery, were, and are now, damaged and injured to the amount of two hundred and twenty-one and $\frac{50}{100}$ dollars. Wherefore the said Charles J. Hill, by said collision & by said carelessness, negligence, & improper conduct on the part of the Maria Martin

7 has sustained damages to the amount of six hundred and seventy and $\frac{40}{100}$ dollars, for which he claims reparation in this suit.

Eighth. That at the time of said collision the said libellant George C. Reed was a passenger on board said propeller, and was the owner of household goods, furniture, tools, & baggage, which at the time of said collision were on board said propeller and a part of her cargo for said voyage, which said household goods, furniture, tools, and baggage were together of the value of eleven hundred and forty-seven dollars, and which became a total loss by and through said collision and by reason of the careless, negligent, unskilful, & improper management of the said barque Maria Martin, whereby the said George C. Reed has sustained damages to said amount of eleven hundred and forty-seven dollars, for which he claims reparation in this suit.

Ninth. That at the time of said collision the said libellant Eliza A. Cogswell was the owner in her own right, as and for her separate property, of household goods, which at the time of said collision were on board said propeller, and a part of her cargo for said voyage, which said household goods were together of the value of five hundred and eighty dollars, and which became a total loss by and through said collision, and by the reason of the careless, negligent, unskilfull, and improper management of said barque Maria Martin, whereby the said Eliza A. Cogswell has sustained damages to said amount of five hundred and eighty dollars, and for which the said libellants Joseph Cogswell and Eliza A. Cogswell claim reparation in this suit.

Tenth. That at the time of said collision, J. W. Doane, P. J. Towle, and John Wright, of Chicago, in the State of Illinois, copartners under the firm name of J. W. Doane & Company, were the owners of thirty-three hogsheads of sugar, fifty boxes of sugar, and one hundred and eighty-four barrels of sugar, which were then on board said propeller, and a part of her cargo for said voyage, which sugar was of the value of fourteen thousand one hundred and sixty-one and $\frac{48}{100}$ dollars, and which (excepting a small portion thereof) became a total loss by and through said collision, and by the reason of the careless, negligent, unskilful, and improper management of the said barque Maria Martin. That said libellant, the Buckeye Mutual Insurance Company, had issued a certain policy or contract of insurance outstanding and valid

8 at the time of said collision, by which said insurance company insured said sugar in the last-mentioned sum to the said J. W. Doane & Company against marine risks and disasters, (one of which was damage or loss by collision;) and by reason of said insurance became liable and bound to pay to said J. W. Doane & Company their losses by said collision as covered by said policy; that said J. W. Doane & Company, after said collision and loss, absolutely & unconditionally abandoned, ceded, and transferred to said insurance company, as and for a total loss, the said sugar, and all their interest therein, together with all hope of recovering the same, if any, and all right the said J. W. Doane & Company had, or might have, or be entitled unto to sue for or recover for the damages sustained, in and by the loss of said sugar, and for the value thereof, which abandonment, cession, or transfer was duly accepted by said insurance company, and said insurance company has paid to said J. W. Doane & Company the said sum of money for which said sugar was insured as aforesaid, and by reason of the premises has been subrogated to and entitled to enforce all rights, claims, and demands in respect to said sugar, or the loss thereof, against the said Maria Martin, her master or owners, or other parties liable therefor, and to sue for and recover for the damages sustained in and

by the loss of said sugar, and for the value thereof; that said Buckeye Mutual Insurance Company, after paying a general average contribution for salvage expenses in raising said propeller and her cargo, apportioned to a part of said sugar that was saved in a damaged condition, and to other property of said J. W. Doane & Company, also insured by said insurance company, on board said propeller and saved with her hull, has realized out of said sugar so saved the sum of one hundred and fifty and $\frac{35}{100}$ dollars. Wherefore the said Buckeye Mutual Insurance Company, by said collision and the loss of said sugar, has sustained damages to the amount of fourteen thousand & eleven and $\frac{13}{100}$ dollars, for which it claims reparation in this suit.

Eleventh. That at and before the time of said collision the said Northern Transportation Company of Ohio, being the owners of said propeller which was sunken & abandoned for a total loss as aforesaid by reason of said collision, and the careless, negligent, and improper management of said barque Maria Martin, the said Buckeye Mutual Insurance Company had issued to said Northern Transportation
9 Company of Ohio two certain policies of insurance outstanding and valid at the time of said collision, by which said insurance company insured said propeller against marine risk and disasters (one of which was damages or loss by collision) in and to the amount of ten thousand dollars, so that by reason of said collision and loss said insurance company became liable and bound to pay to said Northern Transportation Company said sum of ten thousand dollars; that after said collision and loss, the said Northern Transportation Company absolutely and unconditionally abandoned, ceded, and transferred to said insurance company, as and for a total loss, all their interest in said propeller as far as covered by said policies to them issued as aforesaid, together with all hope of recovering the same, if any, and all right to sue for or recover for the damage sustained in and by the loss of said abandoned interest by said collision, and for the value thereof, which abandonment, cession, or transfer has been duly accepted by said insurance company, and said insurance company has paid to said Northern Transportation Company said sum of ten thousand dollars, and by reason of the premises has been subrogated to, and entitled to enforce all rights, claims, & demands in respect to said interest abandoned as aforesaid against the said Maria Martin, her master or owners, or other parties liable therefor, and to sue for or recover for the damages sustained in and by the loss of said insured interest, by reason of said collision, and for the value thereof; that since said abandonment said insurance company, for salvage expenses in raising said propeller and her cargo, has also paid a general average contribution of eighteen hundred and six and $\frac{59}{100}$ dollars, apportioned to, and payable by, the interest in said propeller or hull covered by said policies and abandoned as aforesaid; that the said Buckeye Mutual Insurance Company, after deducting the appraised value of the interest in said propeller, or her hull, insured and abandoned as aforesaid, has sustained damages by said collision and the loss of said propeller, to the amount of seven thousand six hundred and six and $\frac{59}{100}$ dollars, for which it claims reparation in this suit.

Twelfth. That at the time of said collision Addison S. Bass, of Chicago, in the State of Illinois, was the owner of thirty-eight boxes of fruit, of the value of four hundred and thirteen and $\frac{19}{100}$ dollars, which were then on board said propeller, and which (excepting a small portion thereof) were totally lost by said collision, and the careless, negligent, and
10 improper management of the said barque Maria Martin. That at

and before the time of said collision, the said Buckeye Mutual Insurance Company had insured said fruit in the last-mentioned sum, to the said Addison S. Bass against marine risks and disasters, (one of which was damages or loss by collision,) and the policy of said insurance was then valid and outstanding. That after said collision the said Addison S. Bass absolutely and unconditionally abandoned, ceded, and transferred to said Buckeye Mutual Insurance Company, as and for a total loss, the said fruit and all his interest therein, together with all hope of recovering the same, and all the right of said Addison S. Bass to sue for or recover for the damages sustained by the loss of said fruit, and for the value thereof; which abandonment, cession, and transfer the said Buckeye Mutual Insurance Company duly accepted, and thereupon duly paid to said Addison S. Bass the above-named sum, and thereby became subrogated to and entitled to enforce all rights, claims, and demands in respect to said fruit, or the loss thereof, against the said barque Maria Martin, her masters or owners, or other parties liable therefor, and to sue for or recover for the damages sustained in and by the loss of said fruit and for the value thereof. That said insurance company, after paying towards salvage expenses in raising said propeller and her cargo a general average contribution apportioned to a part of said fruit saved in a damaged condition, has realized out of the portion of said fruit so saved the sum of fifty-seven and $\frac{56}{100}$ dollars. Wherefore the said insurance company, by said collision and the loss of said fruit, has sustained damages to the amount of three hundred and fifty-five and $\frac{54}{100}$ dollars, for which it claims reparation in this suit.

Thirteenth. That at the time of said collision V. P. Lewis, of Austin, in the State of Minnesota, was the owner of one covered buggy, which was then on board said propeller, and which, by said collision and the careless, negligent, and improper management of the said barque Maria Martin, was greatly damaged and injured. That at and before the time of said collision, the said Buckeye Mutual Insurance Company had insured said buggy to the said V. P. Lewis against marine risks
11 and disasters, (one of which was damage or loss by collision,) and the policy of said insurance was then valid and outstanding. That since said collision, as required by the terms of said policy of insurance, the said Buckeye Mutual Insurance Company has paid to the said V. P. Lewis, for damage done to said buggy by said collision, the sum of thirty-three dollars, and has also paid towards salvage expenses in raising said propeller and her cargo a general average contribution of fifty-three and $\frac{76}{100}$ dollars, apportioned to said buggy, and has thereby become subrogated to and entitled to enforce all rights, claims, and demands in respect to said damage to said buggy and said sum paid as general average against the said barque Maria Martin, her master or owners, or other parties liable therefor, and to sue for and recover for the same. Wherefore the said Buckeye Mutual Insurance Company, by said collision and the damage done to said buggy as aforesaid, having sustained damages to the amount of eighty-six and $\frac{76}{100}$ dollars, hereby claims reparation in this suit for said sum.

Fourteenth. That at the time of said collision, Carver and Wendover, of St. Louis, in the State of Missouri, were the owners of five boxes of pickles, which were then on board said propeller, and which, by said collision and the careless, negligent, & improper management of the said barque Maria Martin, were greatly damaged and injured. That at and before the time of said collision the said Buckeye Mutual Insurance Company had insured said pickles to the said Carver & Wendover against marine risks & disasters, (one of which was damages or loss by

collision,) and the policy of said insurance was then valid and outstanding. That since said collision, as required by the terms of said policy of insurance, the said Buckeye Mutual Insurance Company has paid to the said Carver & Wendover, for damage done to said pickles by said collision, the sum of fifty dollars, and has also paid towards salvage expenses in raising said propeller and her cargo a general average contribution of eighteen and $\frac{17}{100}$ dollars, apportioned to said pickles, and has thereby become subrogated to and entitled to enforce all rights, claims, and demands in respect to said damage to said pickles and said sum paid as general average against the said Maria Martin, her master or owners, other parties liable therefor, and to sue for and recover
12 for the same. Wherefore the said Buckeye Mutual Insurance Company, by said collision and the damage done to said pickles as aforesaid, having sustained damages to the amount of sixty-eight and $\frac{17}{100}$ dollars, hereby claims reparation in this suit for said sum.

Fifteenth. That the said barque Maria Martin is now lying within said district.

Sixteenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said barque Maria Martin, her tackle, apparel, and furniture; and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters so articulately propounded; and that this honorable court would be pleased to decree the payment of the damages as aforesaid by the libellants respectively sustained, and with costs; and that the said barque, her tackle, apparel, and furniture, may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

SPALDING & DICKMAN, and FINCHES, LYNDE & MILLER,
Proctors for Libellants.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO,
By P. CHAMBERLAIN, *President.*
THE BUCKEYE MUTUAL INSURANCE CO.,
By L. D. HUDSON, *Secretary.*
CHARLES J. HILL,
GEORGE C. REED,
JOSEPH COGSWELL,
ELIZA A. COGSWELL,
N. D. HUNTER,
By F. J. DICKMAN, *their Agent and Proctor.*

UNITED STATES OF AMERICA, *Northern District of Ohio:*

Philo Chamberlain, president of the said Northern Transportation Company of Ohio, and L. D. Hudson, secretary of said Buckeye Mutual Insurance Company, being respectively sworn, say that they have read the aforegoing libel and know the contents thereof, and that the matters therein stated are true to the best of their knowledge, informa-
13 tion, and belief; and the said F. J. Dickman, being sworn, says that he is the agent and proctor of said libellants, Charles J. Hill, George C. Reed, Joseph Cogswell, & Eliza A. Cogswell, all of whom reside out of and are now absent from said State of Illinois; that he is also the agent and proctor of said N. D. Hunter; that he has read the foregoing libel and knows the contents thereof; that he has ascertained

the facts therein set forth from the most authentic sources, and from his best knowledge and information he believes the same to be true.

PHILO CHAMBERLAIN,
President of the Northern Transportation Company of Ohio.
L. D. HUDSON,
Secretary of Buckeye Mutual Insurance Co.
F. J. DICKMAN.

Sworn to before me, clerk U. S. district court for the northern district of Ohio, at Cleveland, this 24th October, A. 1866.

In witness whereof I have hereunto subscribed my name officially, and affixed the seal of the said district court, the day and year last above mentioned.

[SEAL.] FR. GREEN, *Clerk.*

And same day, November 12, 1866, said libellants filed their stipulation, in the sum of $250 00, with Ozro J. Hale as surety, conditioned that said libellants shall abide by the final decree entered in this cause, & shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appelate court.

Said libellants' stipulation is as follows:

Libell'ts' stip'n.

14 District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-six, by the Northern Transportation Company et als. against the barque Maria Martin, &c., &c., for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and he is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this court or, in case of appeal, by the appellate court.

NORTHERN TRANSPORTATION COMPANY OF OHIO,
By O. J. HALE, *Agent.*
THE BUCKEYE MUTUAL INS. CO.,
By O. J. HALE, *Agent.*
N. D. HUNTER,
By O. J. HALE, *Agent.*
CHARLES J. HILL,
By O. J. HALE.
GEORGE C. REED,
By O. J. HALE, *Agent.*
JOSEPH COGSWELL,
By O. J. HALE, *Agent.*
ELIZA A. COGSWELL,
By O. J. HALE, *Agent.*
O. J. HALE.

Taken and acknowledged this 12th day of November, 1866, before me.
J. M. MILLER. *U. S. Commissioner.*

DISTRICT OF WISCONSIN, *ss:*

Ozro J. Hale, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

O. J. HALE.

Sworn to this 12th day of November, 1866, before me.

J. M. MILLER, *U. S. Commissioner.*

15 *Order for process, &c.*

Whereupon it is ordered by the court that process issue to the marshal, returnable on the twenty-first day of November instant, at eleven o'clock in the forenoon, and that this court will, on that day, proceed to the trial and hearing thereof.

And it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial, for at least six days.

Whereupon a monition issued as follows:

16 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-six, by the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza A. Cogswell, against the barque Maria Martin, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said barque or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said barque or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin on the twenty-first day of November, instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twelfth day of November, in the year

of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

FINCHES, LYNDE & MILLER, *Proctors for Libellants.*

[50c. int. rev. stamp.]

17 *Return to monition.*

In obedience to the within precept, I have, this twelfth day of November, A. D. 1866, attached the bark Maria Martin, her boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice by advertisement for six days in the Daily Milwaukee News, and by posting notice to all persons claiming the same, that this court will, on the twenty-first day of November, A. D. 1866, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

CASSIUS FAIRCHILD, *Marshal,*
By W'M S. JACKSON, *Deputy.*

DEC'R 8TH, 1866.—Deposition received from post office & filed.

JANUARY 14TH, 1867.—This day came the claimants of said barque Maria Martin viz., John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, by Messrs. Emmons & Van Dyke, their proctors, and presented to the court their stipulation, with Robert P. Fitzgerrald and John B. Merrill as sureties, in the sum of two hundred and fifty dollars, conditioned that they shall abide and answer the decree of this court in this cause as to costs.

And said claimants' stipulation is as follows:

Claimants' stipulation.

18 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-six, by the Northern Transportation Company et als., against the barque Maria Martin, her boats, &c., for the reasons and causes in the said libel mentioned; and whereas the said barque Maria Martin, &c., is in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said monition now on file in said court:

Appearing John Martin et als., by Emmons & Van Dyke, proctors in their libel filed as the claiment of the said barque, &c., and produced for sureties Robert P. Fitzgerrald, John B. Merrill, and the said John Martin et als., Robert P. Fitzgerrald, & John B. Merrill, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred and fifty dollars, [dollars,] unto the said Northern Transportation Company et al., that the said claimants & sureties shall abide and answer the decree of the said court in the aforesaid cause as to costs, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels,

lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN & OTHERS,
By EMMONS & VAN DYKE.
ROBERT P. FITZGERRALD.
JOHN B. MERRILL.

Taken and acknowledged this 14th day of January, 1867, before me.
J. M. MILLER, *U. S. Commissioner.*

DISTRICT OF WISCONSIN, *ss:*

Robert P. Fitzgerrald & John B. Merrill, parties to the above stipulation, being duly sworn, depose and say that they are each worth the sum of two hundred & fifty dollars over and above all their just debts and liabilities.

ROBERT P. FITZGERRALD.
JOHN B. MERRILL.

Sworn to this 14th day of January, 1867, before me.
J. M. MILLER, *U. S. Commissioner.*

19 And same day (Jan'y 14th, 1867) came said claimants, by their said proctors, and presented to the court their answer.

FEBRUARY 27TH, 1867.—Depositions received from post office & filed.

MARCH 9, 1867.—Deposition received from post office & filed.

Hearing, &c.

APRIL 3, 1867.—This day came the parties, by their counsel—Messrs. Spalding & Dickman, Moore & Finches, Lynde & Miller for libellants; and Messrs. Newberry, Hibbard, and Emmons & Van Dyke for respondents—and respondents filed amendments to the answer, as per stipulation filed, and said libellants filed their replication, and, by consent, the testimony of witness was taken in open court, and this cause came on to be heard upon the pleadings and proofs, and not being concluded, it was adjourned until to-morrow morning.

And said stipulation as to answers is as follows:

20 *Stipulation as to answer.*

U. S. district court, district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY and others
vs.
THE BARQUE MARIA MARTIN, &c.

WILLIAM PHELPS AND OTHERS
vs.
THE SAME.

THE MERCHANTS' INSURANCE COMPANY OF Chicago
vs.
THE SAME.

It is hereby stipulated and consented that the amendments to the

answers in these three cases, respectively, may be substituted for so much of the answers in these cases, respectively, (the amendments in each case being so substituted in the answer in the case the amendments purport to be in,) as precedes the last two articles in the answers respectively—said last two articles being the ones in which limited liability, under the act of 1851, is referred to, and the general allegations that all and singular the premises are true. The subsequent articles in the answers, respectively, may also be properly numbered; said amendments are those which have been submitted to the undersigned April 1st, 1867.

SPALDING & DICKMAN,
Proctors for Libellants.
FINCHES, LYNDE & MILLER,
Proctors for Libellants.

And said amended answer is as follows:

Answer as amended.

In the district court of the United States within and for the district of Wisconsin.—In admiralty.

To the Honorable Andrew G. Miller, district judge, &c.:

The claim and answer of John Martin, Thomas Quaye, David
21 Trotter, and Ralph H Harmon, respondents, to the libel of the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company of Cleveland, Ohio, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza A. Cogswell, his wife, against the barque Maria Martin, her tackle, apparel, &c.

And hereupon the said respondents answer and allege as follows:

First. That the said respondents are, and at the time of filing said libel and of the collision therein mentioned were, the sole, true, and bona-fide owners of the barque Maria Martin, in said libel mentioned, her tackle, apparel, and furniture, and that no other person is the owner thereof.

Second. The said respondents admit the allegations in the first article of the said libel to be true.

Third. The said respondents admit the allegations of the second article of the said libel to be true, except that they deny that any alleged cause or causes of action therein referred to ever existed.

Fourth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the third article of the said libel stated, or of any of the allegations in the said third article contained, and not hereinafter specifically admitted, except such as is derived from heresay or the said libel. The said respondents deny each and every allegation in said third article of the said libel contained, except such as are hereinafter specifically alleged or admitted to be true, and say that many of the matters in said third article are untruly alleged and pleaded, and they demand strict proof of each and every allegation in the third article contained, except such as are hereinafter specifically admitted to be true. The said respondents admit and allege that in the morning of the 22nd day of June, 1866, and after one o'clock in the said morning, but before it was light, the said barque, she being then tight, staunch, well officered, manned, equipped, and provided and laden with a cargo of grain, with David Trotter for her master, was on the Detroit River, below Bois
Blanc Island, bound on a voyage in the pursuit of her aforesaid
22 business from Chicago, in the State of Illinois, to Buffalo, in the

State of New York; that the wind was light from the westward; the night was clear and without fog, and the barque was proceeding at a moderate speed upon a southerly course, in tow of the steam-tug George B. McClellan, with a tow-line about three hundred feet long, and following the said tug according to the immemorial, general, and universally known custom and usage of the river, the said barque as to her course being, according to said custom and usage, under the control and direction of the tug, and her owners having contracted to tow and take the said barque from a point in the St. Clair River to Lake Erie, and the said tug being engaged in the performance of the said contract; that the barque then carried and displayed good and proper signal-lights, as provided by law, having on the starboard side a green light, and on the port side a red light, and had good and proper watch and look-out; that while the barque was so proceeding, the propeller Cleveland was in the river, bound up the river, and upon a northerly course, and was so proceeding up the river very fast, and at an immoderate and improper rate of speed; that a short time (but how long the respondents are unable to state) before the collision herein mentioned happened, and while the barque was so proceeding, and the tug and barque were in their proper places in the river, lights of the propeller Cleveland were made from the barque ahead, or nearly ahead, of the tug, the tug then being ahead of the barque; the tug blew a single whistle twice, with a proper interval, to show that the two blasts were not connected, and ported her helm, and the barque ported her helm, and put her helm hard aport, and both swung to starboard, the tug being the smaller vessel, and with much the smaller draft of water, swinging more rapidly than the barque; that at the time when the helm of the tug and barque were ported, the tug and the barque were both in their proper places in the channel and in the river, and both swung, and from thence down to the time of the collision continued to swing, to the starboard; that the propeller did not slacken her speed, but proceeded at an immoderate, improper, and fast rate of speed, approached the tug upon a course which
23 brought her too near the said tug, passed the tug too near, and and very close to her, and so proceeded that before the collision her bow bore a little off the barque's starboard bow, and a very short time before the collision the propeller put her wheel aport and threw her bow across the bows of the barque, and the barque and the propeller came in collision, striking their port bows together; that soon after the collision the propeller sank; that the collision happened entirely without any fault, negligence, carelessness, or unskillfulness on the part of the barque, or any of her officers, crew, servants, or agents, or any of the servants or agents of her owners, and by means and in consequence of the faults, negligence, want of vigilance, carelessness, and unskillfulness of the propeller Cleveland, her officers and crew, and, among other things, for the reason that the said propeller Cleveland was proceeding, and down to and at the time of the collision proceeded, at an immoderate and improperly fast rate of speed; that she did not slacken her speed; that she approached the said tug and the said barque upon a course which would and did bring her too near the same, and passed the said tug too near the same; that she did not take or keep her proper course and place in the channel, but, on the contrary thereof, went too far to the westward; that she did not change her course, or take the proper steps so as to keep out of the way of, and not collide with, said barque, and was in other respects in fault.

Fifth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fourth article of the

said libel stated, or of any of the allegations in the said fourth article contained and not in this answer specifically alleged or admitted to be true, except such as is derived from heresay or the said libel. The said respondents deny each and every allegation in said fourth article contained, except such as are so admitted to be true, and they demand strict proof of each and every allegation in the said fourth article contained not so specifically admitted to be true.

Sixth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fifth article of the said libel stated, or of any of the allegations in the said fifth article contained and not in this answer specifically alleged or admitted to be true, except such as is derived from heresay or the said libel. The said respondents deny each and every allegation in said fifth article contained, except such as are so admitted to be true, and they demand strict proof of each and every allegation in the said fifth article contained not so specifically admitted to be true.

Seventh. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the sixth article of the said libel stated or referred to, or of any of the allegations in the said sixth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said sixth article contained and demand strict proof thereof.

Eighth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the seventh article of the said libel stated or referred to, or of any of the allegations in the said seventh article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said seventh article contained, and demand strict proof thereof.

Ninth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the eighth article of the said libel stated or referred to, or of any of the allegations in the said eighth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said eighth article contained, and demand strict proof thereof.

Tenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters contained in the ninth article of the said libel stated or referred to, or of any of the allegations in the said ninth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said ninth article contained, and demand strict proof thereof.

Eleventh. The said respondents say that have not any knowledge, information, or belief of any of the matters in the tenth article of the said libel stated or referred to, or of any of the allegations in the said tenth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said tenth article contained, and demand strict proof thereof.

Twelfth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the eleventh article of the said libel stated or referred to, or of any of the allegations in the said eleventh article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said eleventh article contained, and demand strict proof thereof.

Thirteenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters contained in the twelfth article of the said libel stated or referred to, or of any of the allegations in the said twelfth article contained, expect such as is derived

from the said libel, and they therefore deny each and every allegation in the said twelfth article contained, and demand strict proof thereof.

Fourteenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the thirteenth article of said libel stated or referred to, or of any of the allegations in the said thirteenth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said thirteenth article contained, and demand strict proof thereof.

Fifteenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fourteenth article of the said libel stated or referred to, or of any of the allegations in the said fourteenth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said fourteenth article contained, and demand strict proof thereof.

Sixteenth. The said respondents admit the allegations of the fifteenth article of said libel to be true.

Seventeenth. The said respondents deny that all or singular the premises in said libel are true.

And the said respondents, further answering, allege—

Eighteenth. That the said barque, during and at each and at all
26 times in the said libel mentioned, was a ship and vessel of the United States, of the burthen of twenty tons and upwards, duly enrolled and licensed for and employed in the coasting trade of the United States, as is hereinbefore admitted, and at the time of said collision was engaged in the performance of a voyage and the carriage of a cargo from Chicago to Buffalo, as is hereinbefore stated, with freight then pending; that she then was not and is not a canal-boat, barge, or lighter, or used in rivers or inland navigation; that at the time of the happening of the said collision and just before the same happened, the value of the said barque was, as near as the said respondents can state, and as they allege the same, forty thousand dollars, and that her freight then pending, payable on the delivery of her cargo, but not then earned, was as near as the said respondents can state, and as they allege the same, four thousand four hundred & eight $\frac{56}{100}$ dollars; that by the collision herein mentioned (which is the same collision in said libel referred) several owners of property suffered loss, damage, and injury to property owned by them respectively, (but who, or to what kind of property, or to what precise extent, the said respondents are unable to state,) greater than the value of the said barque and her freight then pending; that the said collision, and each and all the alleged losses and damages in said libel referred to, (if any such losses or damages happened, or were ever done, occasioned, or incurred, which the respondents as aforesaid deny,) happened, were done, occasioned, and incurred without the design, neglect, privity, or knowledge of the respondents, and that therefore and pursuant to the act of Congress of the United States entitled "An act to limit the liability of ship-owners, and for other purposes," approved March 3rd, 1851, the said libellants cannot (nor can any of them) in any event (and the said respondents expressly deny that they or either of them can recover or have decree for any amount) recover or have decree for any greater or larger sum than a proportion of the value of the said barque, which shall bear the same proportion to the whole value thereof as the amount of their respect. losses and damages, for which they respectively
may (if they have or either of them has such right) have the
27 right to recover decree bears to the whole loss and damages done, occasioned, or incurred by the said collision, and the said respondents pray that they may have the same benefit and advantage of the

matters stated and referred to in this eighteenth article of this answer as though they plead the same otherwise, or were able to plead, and did plead, the same more fully and particularly, and allege that they have pleaded the same as fully and particularly as they are able to do.

Nineteenth. That all and singular the premises are true.

And hereupon the said respondents pray that the said libel may be dismissed with costs, and that the said respondents may have such other and further, or other or further, relief or decree in the premises as may be meet.

JOHN MARTIN,
THOMAS QUAYLE,
DAVID TROTTER,
RALPH H. HARMON,
By GEO. WILLEY,
Their Agent & Proctor.

GEORGE B. HIBBARD,
WILLEY & CARY, and
EMMONS & VAN DYKE,
Proctors for Respondents.

NORTHERN DISTRICT OF OHIO, *City of Cleveland, ss:*

Ralph H. Harmon, one of said respondents, being duly sworn, deposes and says that he resides in the city of Cleveland, in the northern district of Ohio; that he is one of the respondents named in the foregoing answer; that he knows as much of the matters therein stated or referred to as the others of the said respondents; that he has read the foregoing answer, and knows the contents thereof; and that the same, and the matters therein stated, are true according to the best of his knowledge, information, and belief.

R. H. HARMON.

Subscribed and sworn to before me, the clerk of the United States district court for the northern division of Ohio, in said district, this thirty-first day of December, 1866.

In witness whereof I, the said clerk, have hereunto subscribed my name officially and affixed the seal of said court the day and year last above stated.

[SEAL.] FR. GREEN.

And said replication is as follows:

28 *Replication.*

U. S. district court, Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY }
vs.
THE BARQUE MARIA MARTIN. }

The replication of the Northern Transportation Company of Ohio; the Buckeye Mutual Insurance Company of Cleveland, Ohio; N. D. Hunter, of Chicago, in the State of Illinois; Charles G. Hill, of Gloversville, in the State of New York; George C. Reed, of Detroit, in the State of Michigan; Joseph Cogswell, and Eliza A. Cogswell, his wife, of Akron, in the State of Ohio, libellants, to the answer of John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, defendants, alleges that

from the said libel, and they therefore deny each and every allegation in the said twelfth article contained, and demand strict proof thereof.

Fourteenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the thirteenth article of said libel stated or referred to, or of any of the allegations in the said thirteenth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said thirteenth article contained, and demand strict proof thereof.

Fifteenth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fourteenth article of the said libel stated or referred to, or of any of the allegations in the said fourteenth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said fourteenth article contained, and demand strict proof thereof.

Sixteenth. The said respondents admit the allegations of the fifteenth article of said libel to be true.

Seventeenth. The said respondents deny that all or singular the premises in said libel are true.

And the said respondents, further answering, allege—

Eighteenth. That the said barque, during and at each and at all
26 times in the said libel mentioned, was a ship and vessel of the United States, of the burthen of twenty tons and upwards, duly enrolled and licensed for and employed in the coasting trade of the United States, as is hereinbefore admitted, and at the time of said collision was engaged in the performance of a voyage and the carriage of a cargo from Chicago to Buffalo, as is hereinbefore stated, with freight then pending; that she then was not and is not a canal-boat, barge, or lighter, or used in rivers or inland navigation; that at the time of the happening of the said collision and just before the same happened, the value of the said barque was, as near as the said respondents can state, and as they allege the same, forty thousand dollars, and that her freight then pending, payable on the delivery of her cargo, but not then earned, was as near as the said respondents can state, and as they allege the same, four thousand four hundred & eight $\frac{56}{100}$ dollars; that by the collision herein mentioned (which is the same collision in said libel referred) several owners of property suffered loss, damage, and injury to property owned by them respectively, (but who, or to what kind of property, or to what precise extent, the said respondents are unable to state,) greater than the value of the said barque and her freight then pending; that the said collision, and each and all the alleged losses and damages in said libel referred to, (if any such losses or damages happened, or were ever done, occasioned, or incurred, which the respondents as aforesaid deny,) happened, were done, occasioned, and incurred without the design, neglect, privity, or knowledge of the respondents, and that therefore and pursuant to the act of Congress of the United States entitled "An act to limit the liability of ship-owners, and for other purposes," approved March 3rd, 1851, the said libellants cannot (nor can any of them) in any event (and the said respondents expressly deny that they or either of them can recover or have decree for any amount) recover or have decree for any greater or larger sum than a proportion of the value of the said barque, which shall bear the same proportion to the whole value thereof as the amount of their respect. losses and damages, for which they respectively
may (if they have or either of them has such right) have the
27 right to recover decree bears to the whole loss and damages done, occasioned, or incurred by the said collision, and the said respondents pray that they may have the same benefit and advantage of the

matters stated and referred to in this eighteenth article of this answer as though they plead the same otherwise, or were able to plead, and did plead, the same more fully and particularly, and allege that they have pleaded the same as fully and particularly as they are able to do.

Nineteenth. That all and singular the premises are true.

And hereupon the said respondents pray that the said libel may be dismissed with costs, and that the said respondents may have such other and further, or other or further, relief or decree in the premises as may be meet.

JOHN MARTIN,
THOMAS QUAYLE,
DAVID TROTTER,
RALPH H. HARMON,
By GEO. WILLEY,
Their Agent & Proctor.

GEORGE B. HIBBARD,
WILLEY & CARY, and
EMMONS & VAN DYKE,
Proctors for Respondents.

NORTHERN DISTRICT OF OHIO, *City of Cleveland, ss:*

Ralph H. Harmon, one of said respondents, being duly sworn, deposes and says that he resides in the city of Cleveland, in the northern district of Ohio; that he is one of the respondents named in the foregoing answer; that he knows as much of the matters therein stated or referred to as the others of the said respondents; that he has read the foregoing answer, and knows the contents thereof; and that the same, and the matters therein stated, are true according to the best of his knowledge, information, and belief.

R. H. HARMON.

Subscribed and sworn to before me, the clerk of the United States district court for the northern division of Ohio, in said district, this thirty-first day of December, 1866.

In witness whereof I, the said clerk, have hereunto subscribed my name officially and affixed the seal of said court the day and year last above stated.

[SEAL.] FR. GREEN.

And said replication is as follows:

28 *Replication.*

U. S. district court, Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY }
vs.
THE BARQUE MARIA MARTIN. }

The replication of the Northern Transportation Company of Ohio; the Buckeye Mutual Insurance Company of Cleveland, Ohio; N. D. Hunter, of Chicago, in the State of Illinois; Charles G. Hill, of Gloversville, in the State of New York; George C. Reed, of Detroit, in the State of Michigan; Joseph Cogswell, and Eliza A. Cogswell, his wife, of Akron, in the State of Ohio, libellants, to the answer of John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, defendants, alleges that

they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient; and they humbly pray as in and by their said libel they have already prayed.

SPALDING & DICKMAN & FINCHES,
LYNDE & MILLER,
Proctors for Libellants.

Libellants' Testimony.—Testimony taken before L. W. Ford.

United States district court for the district of Wisconsin, ss.

THE NORTHERN TRANSPORTATION COMPANY OF Ohio et al.
vs.
THE BARQUE MARIA MARTIN.
} In admiralty.

NORTHERN DISTRICT OF OHIO, *ss:*

Personally appeared Franklin J. Dickman, who, being duly sworn, says that he is proctor for the libellants in the above-entitled cause, and that he verily believes that the testimony of Charles Reynolds is material and necessary for the said libellants in the trial of said cause; that the said Charles Reynolds lives at Vernon Springs, Iowa, more than one hundred miles from where the court at which this de-
29 ponent expects the said cause will be tried is appointed by law to be held.

And this deponent further says that he is informed and believes that the said Charles Reynolds is about to go out of the United States, and to a greater distance than one hundred miles from where said cause is to be tried, and before the trial thereof; that Thomas Quayle, John Martin, Ralph H. Harmon, & David Trotter, the owners of, and having the agency of, said barque, now, and at the time of her seizure in said cause, reside in the city of Cleveland, in the State of Ohio, and within two miles of the office, or the place where the examination of the said witness is expected to be taken; that this deponent is not informed & does not know who is the attorney of said Thomas Quayle, John Martin, Ralph H. Harmon, and David Trotter, or that they have any attorney.

FRANKLIN J. DICKMAN,
Proctor for Libellants.

Sworn to and subscribed before me on this 21st day of November, A. D. 1866.

[SEAL.]

L. W. FORD,
Notary Public in and for Cuyahoga County, Ohio.

[5-cent stamp.]

Let Charles Reynolds, the witness named in the above affidavit, be examined, de bene esse, before me, accordingly, at my office, at number 3 Perkin's Block, Public Square, at Cleveland, Ohio, on the 24th day of November, 1866, at 9 o'clock a. m., and let 2 days' notice be given to Thomas Quayle, John Martin, Ralph H. Harmon, and David Trotter of such examination.

Cleveland, November 21st, 1866.

[SEAL.]

L. W. FORD,
Notary Public in & for Cuyahoga County, Ohio.

[5-cent stamp.]

United States district court for the district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY OF Ohio et al.
vs.
THE BARQUE MARIA MARTIN. } In admiralty.

NORTHERN DISTRICT OF OHIO,
Cleveland, Nov. 21st, 1866.

SIRS: You are hereby notified that Charles Reynolds, who lives more than one hundred miles from Milwaukee, in the State of Wisconsin, where the court at which said cause will be tried is appointed by law to be held, will be examined de bene esse before me, at my office, at number 3 Perkin's Block, Public Square, Cleveland, Ohio, on the 24th day of November, A. D. 1866, at 9 o'clock a. m. of said day, as witness for the above-named libellants according to the act of Congress in such case made and provided, at which time and place you are entitled by law to be present and put interrogatories to the said witness.

L. W. FORD, [SEAL.]
Notary Public in and for Cuyahoga County, Ohio.

To THOMAS QUAYLE,
JOHN MARTIN,
RALPH H. HARMON, and
DAVID TROTTER.

NORTHERN DISTRICT OF OHIO, *ss:*

J. H. Johnson, deputy U. S. marshal for the N. D. of Ohio, being duly sworn, deposes and says that he served an original notice, of which the above is a true copy, on the above-named John Martin, Ralph H. Harmon, & Thomas Quayle, by delivering the same to each of them in person, at Cleveland, Ohio, in said district, on the 21st day of November, 1866, at 3 o'clock p. m. of said day; David Trotter not found in the district.

J. H. JOHNSON,
Dpt. U. S. M'l for N. D. of Ohio.

Sworn and subscribed before me on this 22nd day of November, 1866, at my office.

[SEAL.] L. W. FORD,
Notary Public in and for Cuyahoga County, Ohio.

[5-cent stamp.]

M'l's fees.

Milage, 3	18
Service	6 00
	$6 18

UNITED STATES OF AMERICA,
Northern District of Ohio, City of Cleveland, County Cuyahoga, and State of Ohio, ss:

Be it remembered that on the twenty-fourth day of November, A. D. 1866, I, Lewis W. Ford, a public notary within and for the county of

Cuyahoga, in said State of Ohio, duly commissioned and sworn, did call and cause to be and personally appear before me, at my office, number three Perkin's Block, Public Square, in said city of Cleve-
31 land, in said county, Charles Reynolds, to testify and the truth to say on the part and behalf of the Northern Transportation Company of Ohio et al., libellants, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, wherein the Northern Transportation Company of Ohio et al. are libellants, and the barque Maria Martin, respondent.

Deposition of Cha's Reynolds.

And the said Charles Reynolds, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Reynolds, and he did thereupon depose, testify, and say as follows, in answer to the following interrogatories and cross-interrogatories—present, the owners of the barque Maria Martin, including David Trotter; F. J. Dickman, esq., proctor for libellants; A. C. Keating, agent for the Northern Transportation Company of Ohio; and George Willey, esq., and John E. Cary, esq., counsel for respondents:

Questions by F. J. Dickman, esq., proctor for libellants.

1 interrog. What is your name, age, place of residence, and occupation?

Ans. My name is Charles Reynolds; age, twenty-five; residence, Vernon Springs, Iowa; and my occupation is that of mariner.

2 interrog. How far is said Vernon Springs from Milwaukee, in the State of Wisconsin?

Ans. About two hundred and fifty-five miles.

3 interrog. Where do you expect to be within the next thirty or forty days?

Ans. I expect to be on my way to the coast of South America.

4 interrog. How long have you been a mariner?

Ans. For five years.

5 interrog. In what capacity of service, as a mariner, have you been during that time, and how long in such capacity?

32 Ans. I have been before the mast on a schooner part of two seasons, and wheelsman on a propeller part of three seasons.

6 interrog. How were you employed on the morning of the twenty-second of June, 1866?

Ans. I was on the watch, wheeling on the propeller Cleveland.

7 interrog. State whether the propeller Cleveland, while you were on watch, at said time, and at the wheel, came in collision with any vessel; &, if so, with what vessel.

Ans. She did come in collision with the Maria Martin.

8 interrog. Please tell all you know in reference to said collision, and how it occurred.

Ans. We cleared Bear Point about two o'clock in the morning of the 22nd of June, 1866; hauled her up on her course, north by east, for the light; saw a tug on her starboard bow, about three-quarters of a point; ran along that way for four or five minutes, and the tug bore then between a quarter and a half a point on her starboard bow; the tug gave

one whistle; the propeller didn't have time to answer it, and the tug gave another, which the propeller did answer. I got orders to put my wheel aport, and I did put it aport, cleared the tug all right, about a hundred or a hundred & fifty feet abreast. Before we came abreast I got orders to steady. I had the wheel pretty nearly hard aport, and I let go of it, & it ran about a round back to starboard; gave three or four spokes more, & I got orders to hard aport again, and I did so. I had the wheel hard aport about ten seconds before she struck the propeller.

9 interrog. How long was it between the first and the second whistle of the tug?

Ans. I should think about half a minute.

10 interrog. Was the wheel of the propeller hard aport before she passed the tug?

(Question objected to as leading by respondents' counsel.)

Ans. Yes, sir.

11 interrog. How was the wheel of the propeller before she passed the tug?

(Question objected to by counsel for respondents because it is
33 evident that the last question was asked to avoid the effect of the first above.)

Ans. I was told to port, and I did so. I put it nearly hard aport; I was told.

12 interrog. What was the condition of the propeller's steering-wheel by the time the propeller reached the end of the tug?

Ans. Witness asks, "Which end of the tug?"

13 interrog. What was the condition of the propeller's steering wheel by the time the propeller's stern reached even with the stern of the tug?

Ans. I was putting it hard aport then. The captain gave me orders to put it hard aport.

14 interrog. How far at that time was the tug from the Maria Martin?

Ans. I should think then she was between three and four hundred feet.

15 interrog. About how far was the propeller from the tug at the time when the propeller answered the tug's whistle as aforesaid?

Ans. I should think about a mile.

16 interrog. Was the propeller going all clear of the tug when she came abreast of her?

(Question objected to as leading by respondents' counsel.)

Ans. Yes, sir.

17 interrog. When the wheel of the propeller was put hard aport, where or in what direction did she go?

Ans. I put the wheel nearly hard aport the first time, & then I did put it hard aport; & then I got orders to steady before I came abreast of the tug, & then I got orders to put her hard aport a second time when abreast of the tug. The first time I got orders to put the wheel aport, & put it nearly hard aport.

18 interrog. When you put the wheel of the propeller hard aport, which way does she go, right or left?

Ans. She go to the right.

19 interrog. When you came abreast of the tug, about how far were you from the Canada shore?

Ans. I cannot answer that question, for I don't know how far we were from it.

20 interrog. About how far?

34 Ans. Well, I should think about half a mile.

21 interrog. Who gave you the orders to put your wheel aport and hard aport?

Ans. Captain Williams, the master of the propeller.

22 interrog. When you first made the tug from on board the propeller, what lights of the tug did you see?

Ans. Well, I saw a bright light first.

23 interrog. Will you please state how, or the manner of the collision between the propeller & the Maria Martin, and how they struck?

Ans. She struck the pilot-house first, and carried away our fore-rigging; struck her about midships; I didn't pay much attention. The Maria Martin struck the propeller. The pilot-house was torn all to pieces.

24 interrog. State on what side of the propeller the Maria Martin struck the propeller.

Ans. On the port side. I came out of the pilot-house, and went aboard of the Maria Martin; then I took my clothes aboard of the Maria Martin, and was helping passengers aboard of the Maria Martin until the propeller went down.

24½ interrog. State what orders were given, or what was said, by the captain of the propeller Cleveland just at the time of the collision.

(Question objected to by respondents' counsel as indefinite as to time, & as not part of the res gestæ.)

Ans. Well, I had the wheel hard aport, and answered him, "Hard aport," & he kept telling me to put it hard aport. After I answered him three or four times, I heard him say, "God Almighty! where are you going with that vessel?"

25 interrog. You say that when you passed Bear Point you hauled up north by east for the light. What light did you refer to?

Ans. It's the light on Bois Blanc Island.

26 interrog. What officers of the propeller Cleveland were on duty before and at the time of the collision, if any?

Ans. The captain, the first mate, & look-out.

35 27 interrog. Where was the first mate of the propeller at the time of the collision, & what, if anything, occurred to him at that time?

Ans. He told me he was on the top of the pilot-house, & thrown overboard.

(Answer objected to.)

28 interrog. How long was it after the collision before the propeller sunk?

Ans. Well, I think it was about fifteen minutes. The water was about twenty-seven feet deep there where she sank.

29 interrog. Do you know Captain Trotter by sight; Captain Trotter, captain of the Maria Martin?

Ans. If I had met him this morning before he came in here I wouldn't have known him.

30 interrog. Is he present in this room?

Ans. A man the call Capt. Trotter is present.

31 interrog. Did Jno. Martin apply to you, after the collision, to give you employment in his ship-yard?

(Question objected to as irrelevant.)

Ans. Yes, sir.

32 interrog. When the propeller Cleveland passed the tug, on which side of the tug did she pass?

Ans. On the port side of the tug.

33 interrog. Do you know the name of that tug? If so, state it.

Ans. At the time I didn't. In the morning I ascertained it was the George B. McClellan.

34 interrog. Did the tug have any other vessel in tow besides the Maria Martin?

Ans. No, sir; I didn't see any other.

Cross-examination by Jno. E. Cary, esq.

35 interrog. Did you receive the order to "steady" after the first order was given by the master of the propeller to port? Was this the next order? I read to you your answer to the 17th question.

Ans. Yes, sir.

36 interrog. What was the next order given to you at the wheel after the order to "steady" was given?

36 Ans. The next order was to "hard aport."

37 interrog. Do you know what constitutes a compliment of men for a propeller of the capacity of the Cleveland?

(Objected to by complainants' counsel.)

Ans. I think I do.

38 interrog. State it.

Ans. A captain, two mates, two look-outs men, two engineers, two firemen, six deck-hands, a steward, one cook or two, a cabin-mate & cabin-boy, & two wheelsman.

39 interrog. Whose watch on deck was it at the time of the collision?

Ans. The captain's and first mate's & look-out. To my answer to the 38th interrogatory I wish to add this: That instead of two look-outs men it should be one look-out man & a watchman.

40 interrog. When the first whistle was sounded from the tug, who sounded the whistle on the propeller in answer?

Ans. No one.

41 interrog. What order was given then & by whom?

Ans. The captain told the mate to go up and sound two whistles, and just as the mate got hold of the whistle-string the tug blew another, which the captain told the mate to answer. The captain said to the mate, "Blow one whistle," and said to me, "Port." I answered him, "Port," & ported my wheel.

42 interrog. Please state where the mate was standing when the order was given him to blow the two whistles.

Ans. He was standing on the promenade-deck with [with] the captain.

43 interrog. On which side, & how far forward, could you see him?

Ans. I think he was standing about midships. I could see him about as far forward as the capstan, standing by the captain; they were close together, talking.

44 interrog. Where was the whistle-string located?

Ans. It was made fast to the stairs that go to the top of the

37 pilot-house on the starboard side.

45 interrog. Where was the mate when the master of the propeller gave the order to answer the second whistle of the tug?

Ans. I think I saw him standing on the hurricane-deck, right at the mast, on the starboard side.

46 interrog. I read to you the latter part of your answer to the eighth interrogatory: "Before we came abreast, I got orders to steady; I had the wheel pretty nearly hard aport, & I let go of it, and it ran about a round back to starboard; gave three or four spokes more, and got orders to hard aport again, and I did so." Will you please explain what you mean by giving three or four spokes more?

Ans. I put the wheel three or four spokes to starboard to steady her; the same way I let it run.

47 interrog. Did you at this time, under this order, let the wheel go by the run?

Ans. Yes, sir; for it would run back faster than I could give her spokes.

48 interrog. How far from Bois Blanc light was it to the place of collision?

Ans. I think it was about a mile and a half.

49 interrog. In whose watch was you?

Ans. I was in the mate's watch.

50 interrog. How long had you been on deck?

Ans. About three hours.

51 interrog. Where you at the wheel all the time?

Ans. Yes, sir.

CHARLES REYNOLDS.

UNITED STATES OF AMERICA,
State of Ohio, Cuyahoga County, ss:

By this public instrument be it known to all whom the same doth or may concern in any wise that I, Lewis W. Ford, a public notary in and for the county of Cuyahoga, in the State of Ohio, by letters-patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Cleveland, county of Cuyahoga, & State of
38 Ohio, do hereby certify that under and by virtue of the acts of Congress of the United , approved 16th of September, 1850, by the 31st Congress, 1st session, entitled "An act to authorize notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases;" also another act passed by the 33d Congress of the United States, 1st session, chapter 159, on the 29th day of July, 1854, entitled "An act to authorize notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases," thereby giving and granting to notaries public full powers and authority to take depositions, and to do such other acts in relation to evidence to be used in the courts of the United States in the same manner and with the same effect as commissioners to take acknowledgements of bail and affidavits may now lawfully take and do. I do further certify that the reason for taking the annexed and foregoing deposition is, and the fact is, that the testimony of the witness (named, sworn, and examined in said annexed deposition) is material and necessary in the cause, the title whereof is in the caption of said deposition named, and pending in the United States district court for the district of Wisconsin; and that the said witness lived at a greater distance than one hundred miles from Milwaukee, in the State of Wisconsin, the place of trial of said cause, and was about to go out of the United States, and to a greater distance than one hundred miles from where said cause is to be tried and before the trial thereof.

I further certify that written notification of the time and place of taking the said deposition, signed by me, was made out and served on John Martin, Ralph H. Harmon and Thomas Quayle, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 24th day of November, A. D. one thousand eight hundred and sixty-six I was attended by A. C. Keating, agent of the Northern Transportation Company of Ohio, one of
39 the libellants; F. J. Dickman, esq., proctor for libellants; the owners of the barque Maria Martin, David Trotter included; and Messrs. Willey & Cary, proctors for respondents; and by the witness aforesaid, who was of sound mind and of lawful age, and the witness was by me first carefully examined, and cautioned, and sworn to testify

the truth, the whole truth, and nothing but the truth, and the foregoing deposition was by me reduced to writing in the presence of the witness aforesaid and from his statements, and after carefully reading the same to said witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same was taken, and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post office, at Cleveland, Ohio, the place where the said deposition was taken. And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and official seal this twenty-fourth day of November, A. D. 1866.

[SEAL.] LEWIS W. FORD,
Notary Public in and for Cuyahogo County, Ohio.

[5-cent stamp.]

THE STATE OF OHIO, *Cuyahoga County, ss:*

I, Frederick J. Prentiss, clerk of the court of commons pleas, a court of record of Cuyahogo County aforesaid, do hereby certify that S. W. Ford, before whom the annexed deposition was taken, was, at its date, a notary public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting and believe his signature thereto is genuine, and that the annexed instrument is executed and acknowledged according to the laws of the State of Ohio.

40 In witness whereof I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 5th day of December, A. D. 1866.

[SEAL.] F. J. PRENTISS, *Clerk.*

[5-cent stamp can'l.]

Marshal's fees, (as by his return above)	$6 18
Witness fees, for attendance	1 50
Mileage	10 00
Notary's fee	7 84
	$25 52

Paid by libellants.

Deposition taken before J. Elisha Winder.

THE NORTHERN TRANSPORTATION COMPANY of Ohio et al.
vs.
THE BARQUE MARIA MARTIN.

WILLIAM PHELPS ET AL.
vs.
THE BARQUE MARIA MARTIN.

THE MERCHANTS' INSURANCE COMPANY OF Chicago et al.
vs.
THE BARQUE MARIA MARTIN.

Testimony taken on behalf of libellants, Feb. 7, 1867. Taken before J. Elisha Winder, U. S. commissioner, at Detroit, Michigan, on Feb'y 7th & 8th; W. A. Moore & F. J. Dickman attending as proctors for the libellants, and George B. Hibbard attending as proctor for respondents.

Deposition of Joseph Byron.

Joseph Byron sworn:

I reside at Malden, Canada. I am a sailor; have sailed 14 years from Chicago to Buffalo, on the lakes and rivers; sailed as an officer 8 years—as mate and second mate; have been master one season; one season first mate, and part of another season. The season of 1866 I was mate of the tug McClellan. I recollect passing down the river with the barque Maria Martin, when a collision occurred between the Maria Martin and propeller Cleveland; we had no other vessel in tow. We took her in tow on St. Clair River for Lake Erie; took her in tow in the afternoon of the 21st of June. We passed Detroit between 11 & 12 o'clock that night. We had about 300 or 350 feet of line out. I think that was a long line. Capt. Young was master of our tug; his name was Philip H. Young. It was the capt's watch when we passed Detroit. The watch changed at 12 o'clock. After 12 I came on watch. 41 2nd engineer Peter McGraw, Peter Young, Frank Homer, wheelsman, were in my watch; it was a full watch. It was a starlight, pleasant night; no moon. The collision took place 1 mile or 1½ below Bois Blanc light; I saw the lights of the propeller about 3 or 4 minutes before the collision. We met the W. K. Muir with a tow of 5 vessels before meeting the propeller; we left the Muir on my port hand, a good clearing distance. While passing the tow I saw the green & bright lights of the Cleveland. When I first saw the propeller lights, I blew one whistle, and ported ½ a point; the whistle was not answered; she could not have been over a mile or ¾ off then. We were then just at the end of the Muir's tow. The propeller then bore ¼ of a point on our port bow & showed a green & bright light. In a short time I blew another whistle, and she answered. When she answered the whistle, she was not more than ¼ of a mile off. After I blew the second whistle, she shut in the green light and showed the red light; right away almost after I blew the 2nd whistle, she showed the red light. No other order was given on our boat. The propeller passed us nearly 100 feet on our port hand; she was then heading away from us to the eastward. As the propeller passed us, I saw the Martin sheering off to the eastward. At that time our capt. came on deck. I cannot say exactly how far the Martin was out of the line of the tow. I should think quite a little piece, she was out of the track of the tug about a quarter of a point from the line of the tug. I cannot say exactly how far she was to the port of the line of our tow. We were heading S. W. by S. ½ S. I cannot say how she was heading. The Martin was heading about ¼ of a point to the south'ard of what we were.

Question. Was her heading at this time inside or outside of you?

(Objected to on the ground that it has been asked & answered two or three times.)

Answer. She was heading to the Canada shore. The vessel struck the propeller on her port side near amidships. I did not see exactly where she struck her; it was near amidships. I think the line parted when the vessel struck the propeller.

Question. Will you take the models and show the relative
42 position of the three vessels at the time of the collision?

Answer. I think that was about the position when they struck. The heading of the vessel varies from the heading of the tug about a ¼ of a point. When I took the deck I think we were about two miles below Detroit. At spells the barque towed well enough; at other times she did not. Sometimes she did not follow the tug straight; she sheered a small distance, sometimes one side and sometimes the other. We were going about 7 or 8 miles an hour with the current passed the land.

Question. Did you make a statement before Ralph & Sanders as to the facts of that collision soon after it occurred?

(Objected to as incompetent.)

Answer. Yes, sir.

Question. Did you in that statement state that the propeller and tug passed each other about 100 feet apart? "As the propeller passed us, the vessel was heading to the eastward nearly at right angles with the tug, as she was heading at the time S. W. by S. ½ S."

(Objected to as leading & incompetent & that the libellants cannot undertake to contradict their own witness in this way or thus attempt to affect his testimony.

The counsel for libellants claim the right to call attention of witness to a former statement made by him under oath, for the reason that they are taken by surprise by the statement as now made and for the purpose of refreshing the recollection of the witness.)

Answer. Yes, sir; I did.

Question. Was that statement true in substance and in fact?

(Objected to on same ground as the last question.)

Answer. It is. I know the master of the Martin. He resides in Canada, near where I reside. I have seen him to-day. I saw him last week.

Question. Was not the statement you made before Ralph & Sanders, an extract of which was read to you to-day, read to you by me, Mr. Moore, counsel for libellants, at my office two or three weeks ago; and did you not then and there state that that statement was entirely true?

43 (Objected to on same grounds as above, and also that it does not appear what the whole statement contained.

Counsel for libellants are willing that the whole statement should be put in evidence. Counsel for claimants also is not waiving any objection to its competency.

Question. Do you make any objection to its competency?

Answer. I make objection to the nature of such testimony, claiming that all the testimony of this kind is incompetent, but I insist on its being put in as a part of the last question.

Counsel for libellants will produce a copy of said statement in response to the gentleman's insisting, and have it annexed to this deposition.)

Answer to last question to the witness. Yes, sir.

Cross-examined.

I was on the McClellan about 2½ months at the time of the collision. The capt. of the McClellan was Philip H. Young; 1st engineer, John

Hunter; 2nd engineer, Peter McGraw; mate, Joseph Byron; wheelsman, Frank Homer; look-out, Peter Young. I do not know the names of the fireman and deck-hands.

I do not know how long the McClellan is. It was my watch from 12 o'clock until after the collision, and I had charge of the McClellan's deck until after the collision. We met the Muir, with 5 vessels in tow, before we met the Cleveland. At the time I saw the Cleveland first I was about abreast of the third or 4th vessel of the Muir's tow. I cannot say certainly. I did not port the wheel to pass the Muir's tow. We were to the westward of the centre of the channel when we passed the Muir's tow. After porting ½ a point, and until the collision, I gave no orders to port any more. When we passed the Muir's tow we were heading about S. S. W. When the boats came together we were heading S. W. by S. ½ S. At the time of collision we were to the westward of the centre of the channel. After changing my course to S. W. by S. ½ we kept right on in that direction. I was standing on top of the pilot-house at these times. I could see the compass from where I stood. The current is about 3 miles there. I did not notice when in the river the Martin steered wild; I noticed her several times. The statement
44 before Ralph and Sanders was taken in June, the day after the collision; I did not read it over at the time it was taken; I cannot read; the capt. of the tug was present when I made my mark to this statement.

Question. Will you please explain what a right angle means?

Answer. I think it means when one vessel is heading a quarter of a point away from the other; I do not know what a right angle means. I live on the Canada side, 18 miles below Detroit. I see Capt. Trotter every week; I never talked with him, except to pass the time of day last week, and at the time of collision I talked with him; I never talked with him about the collision since I made the statement before Ralph & Saunders. It was a starlight night; no moon. Just before the propeller lapped us, I did not hail her to port her wheel; I am not sure about it, but don't remember doing it. I noticed the propeller's wheels going as she passed us; I am not positive she was 100 feet off when she passed, but that is my opinion.

Re-direct.

If the Martin had followed in the line of the tug, would there have been a collision, in your judgment?

Answer. I don't think there would.

Re-cross.

If the propeller Cleveland had ported one point more just after you blew your second whistle, wouldn't she have cleared the Martin?

Answer. I don't think she would at that time.

Question. If the propeller had changed her course a point more to the eastward when you blew your second whistle and kept on that course, as the vessel struck her amidships, as you say, do you think she would have cleared the vessel?

Answer. If she had been a point more to the eastward she would have cleared.

his
JOSEPH + BYRON.
mark.

Deposition of John M. Hunter.

John M. Hunter sworn:

I reside in Detroit. I am an engineer on steam-tugs. I have been on a tug 3 years; have been an engineer 11 years. In 1866 I was on the tug Geo. B. McClellan. I recollect the collision between the Cleveland & Martin; it was not during my watch; I had left the engine-
45 room & turned in; I think I turned in that night about one o'clock. My watch was off at 12 o'clock; 2nd engineer McGraw succeeded me at the engine; I next came out a little after two o'clock; something disturbed me; I laid it to the parting of the line. The room I occupied was about 8 inches forward of the tow-post, on the port side amidships, the door opening out aft. I came on to the deck; when I came out I saw what I took to be the vessel on our port quarter & the line gone or slacked down into the water. I do not know the exact point of the compass she was heading. I am not a navigator. She was heading off to the eastward, probably 3 or 4 points to the eastward, 3 perhaps; 3 would be a pretty good sheer-off. I judged in part from her tow-line, which was about 10 feet from where it would be usually. I do not know where the propeller was at that time, except that I saw a light, which was represented to be her light, off to the leeward of the vessel. I think the collision had not then occurred. When I came out and saw the Martin, she was more than her width to the port of the line of the tow and her bow most to port.

Question. How soon after you came out and saw the Martin did the collision occur?

(Objected to because it assumes that the collision occurred after he came out.)

Answer. If it had not occurred it perhaps might have been 3 or 5 minutes; it might have been longer; I don't think it was more than 5 minutes. After I came out I saw first that the line was in the water, the engine of the tug was immediately stopped; they were about to back her. I told them not to back her until they hauled in the line to get it from the wheel. I don't know that the collision had not occurred when I came out, only from the blowing of the whistle; I don't know but it had. The whistle of the propeller blew soon after I came out & continued to blow for 8 or 10 minutes; I presume it blew until the propeller sunk.

Cross-examined.

I had turned in my berth; it is aft the engine-room; I had my
46 pants on & did not stop to put on any more things. Something disturbed me; I thought after I got on deck it was the parting of the line. I did not see the propeller to recognize her until after the collision. I noticed the barque standing off to the eastward before the collision; I do not know whether I came on deck before or after the moment of the collision; I had been asleep just before I turned out; had been asleep perhaps an hour.

Re-direct.

By leeward I mean off to the port side; my impression was that the wind was over the starboard side.

J. M. HUNTER.

Deposition of Peter McGrath.

Peter McGrath sworn:

I reside in Detroit. I am an engineer, and have been about 7 years, of tugs and steam-vessels. I was 2nd engineer of the tug McClellan in 1866. I recollect the collision between the Cleveland and the Martin. It occurred about 2 o'clock a. m., June 22; it was during my watch; I took the engine at 12 o'clock. It was a clear, starlight night; no moon. The engine is aft on the main-deck, doors on both sides; the principal is on the port side. I saw the Cleveland about ½ a mile off, before the collision, coming towards us. I was then standing at the engine-room door on the port side. I saw the lights and the mate blew one whistle, one blast; it blew the second time about a minute after, perhaps not so long, but long enough so you could tell it was not two whistles. The propeller did not answer the first blast but did to the second; at the time of the answer to our second blast I could see her green and bright lights, & she was heading for us; when we blew the second whistle she ported; I mean the propeller ported and we did also; we ported about the time we blew the second whistle, could not say whether it was before or after I saw our boat swing. The propeller was not over a ¼ of a mile off when the second whistle was blown. I saw the Cleveland come along all right, and passed us about 100 feet off, perhaps not so far; I could see her name forward. When she passed us she was heading,
47 not exactly in the channel, a little off to the Canada side, to the starboard hand, coming up. After the propeller got about ½ the length of the tow-line I saw that the barque must collide with the propeller; the barque was heading off to the port hand of the tug, I should judge all of 3 points, between 2½ or 3 points; I could not tell exactly; I could not see the compass. When the propeller was passing us she was not swinging, but after she passed us she did swing to the eastward. When they struck, the barque was heading off on the port side of the tug; she was, in fact, to the port side of the line of the tow. The barque gave her line from the port side, I think, but I will not be positive.

Question. State if she had followed the tug she would have collided with the propeller in the manner she did.

(Question objected to because not a proper subject of expert inquiry.)

Answer. She would not have collided; she would have passed the propeller the same as the tug did. When I am at my engine I am part of the time outside & part inside, and do stand right in the door to work the engine. There is no obstruction aft on the deck of our tug from our engine-room door. I noticed the Martin that night towing down; she steered a little wild. By steering wild I mean that she steered first one way and then the other. I could not exactly tell the length of the line; it was a long tow-line.

Question. About how much had the propeller swung to starboard from the time she passed the tug up to the time the barque struck her?

Answer. She might have swung 2 points. I know the Martin struck the propeller on the port side, but I cannot say exactly where. I did not notice any vessels on our starboard hand a short time prior to the collision.

(No question is made in either of these cases as to the condition, position, or sufficiency of the signal-lights of either the barque, the tug, or the propeller.)

I could not exactly tell the size of the line. I should judge it was 5 or 6 inch, perhaps more.

Cross-examined.

I have sailed as a sailor 8 or 9 years ago. I never sailed one season clear through, though I have sailed before the mast. I cannot tell ex-
48 actly how long I have sailed as a sailor altogether. Have been engineer 8 years, if not more. I am 33 years old. From 12 o'clock up to the time of the collision the night of the collision, I had charge of the engine. I had nothing to do with the navigation of the vessel, or with avoiding vessels, or looking out for the tow; all I had to do was to obey orders given me by the officers of the deck in regard to the engine. Those orders are given through bells; the engine is worked through bells. We passed one tow just before we saw the Cleveland, and we were well over to the westward of the channel. I remember checking down our engine some little time before to let the settler aboard. When we met and passed the Cleveland I should judge we were going past the land between 5 & 6 miles per hour. The engineer can tell better than the officer of the deck about the speed of his vessel, and the officer better than the engineer about courses and distance. And the officer of the deck can tell better than the engineer about the heading of his own vessel & those around him, because he stands right by the compass. When the propeller passed us she might have been less or more than 100 feet; I could not tell exactly. When the propeller was exactly abreast of us she was not swinging, and she began to swing when she got about half-way down the tow-line. I think she swung about 2 points, & might have swung more, & might have swung less, from the time she was ½ the way down the tow-line up to the time of the collision. There was nothing that I could see to prevent the propeller commencing to swing when she was abreast of us. I did not pay much attention to the other tow. When the propeller passed us I cannot say how far we were to the westward of the centre of channel. I know we were to the westward, but don't think we were as far as 200 feet from the center of the channel. I did not notice the barque much until after the propeller passed us. I had been looking at the propeller. When I noticed that the barque was to the port of the tug, it was after the tug had ported her wheel. I mean that the stern of the barque was in our wake when I say that she lay off our port side, and that the barque was heading to port of us; she was heading off our port side and go-
49 ing off on the port side all the while. I mean she was going the way she was heading. She was not going any faster than we were. There was very little wind at the time of collision. When the propeller passed us, Hunter was not on deck. He came on deck just about the time of collision, or a little before; it was not after. I know I spoke to him before the collision.

Re-direct.

I did not notice the direction of the wind, there was so little of it. The collision occurred, I cannot say how far from the Canada shore, but I know that after the collision the barque ran aground.

PETER McGRATH.

Deposition of Patrick H. O'Neal.

Patrick H. O'Neal sworn:

I live in Detroit; I am a sailor; I am 34 years old; have sailed since 1851; as an officer, about 8 years. In 1866 I was master of the schooner

Monitor all the season. She was in the grain trade from Buffalo to Chicago. She is about 21,500 bushels corn & 600 tons capacity. I have seen the Maria Martin. I recollect the night of the collision between her and the propeller Cleveland. I was then on the Monitor, and she was the last one in the tow of the W. K. Muir. I had been up all night, the Muir picking us up until we got straightened up the river. I then turned in, left 1st mate, Mr. Bell, on deck; got nearly to sleep, if not quite so; was woke up by some noise, jumped up, and heard the cry of "Hard aport;" went on deck immediately, saw my mate running aft; he said there was going to be a collision. I got on top of the cabin; saw the Martin; she just passed us. I heard some one sing out, "Hard aport." I heard it sung out a good many times, and by more voices than one, seemingly. It seemed to come from the Martin first, then from the propeller & the Martin. After the vessel passed us I thought the vessel swung to port; answered her starboard helm. At that time I thought the propeller ported her wheel and swung to starboard, and that she continued to swing so until the collision. I saw them strike, and I judged the propeller struck the barque at an angle of 45°, hitting her abaft the foremast on the propeller's port side. When I came
50 on deck the barque seemed to be following the tug, or the barque, if anything, swinging to port a little, if anything. I thought the barque continued to swing to port up to the time of the collision. At the time of the collision, I could not tell how much to port she was off the line of the tug; she shut out the tug from my sight before the collision.

Cross-examined.

I think I had just fallen asleep. My room is in the forward part of the cabin, on the starboard side; the cabin is aft. I heard a noise and jumped up, & then heard the cry of "Port." I did not stop to put on any clothes. I then went on top of the cabin. The floor of the cabin is below the deck; there are about 6 steps from the floor of the cabin to get on deck, & then 2 steps to get on the cabin. There is about 4 or 5 steps from my door to the bottom of the steps leading on deck, though I could make it in three steps. I did not see any of the vessels or their lights until I got on the cabin. The Martin's stem was then about abreast of our stem. I don't recollect seeing her signal-lights. I did not look for them; the vessels were so plain; the screen-boards would have shut her lights out. I don't recollect noticing any of the propeller's lights. I think I was in my room when I first heard the cry of "Port." I judged that to come from the Martin. I do not undertake to state anything positively. I got up out of my sleep and was confused. In a good deal of my deposition that I have given I was confused. I noticed that the tug was ahead of the vessel and seemed to be going to the westward. My impression was that the tug had ported her helm, and was sheering to starboard. I heard no whistle until after the collision that I could tell positively; the noise that woke me up may have been a whistle. My vessel was in motion all the time, going pass the land about 3 miles per hour. There was no compass where I was. I looked for none. I am quite certain about the position they struck, but cannot say that it was an angle of 45° exactly.

51 *Re-direct.*

The collision occurred, as near as I could see, right astern of me. I was no more confused that night than any man would be getting up so.

I could see the landmarks all about; I mean I could see the land on both sides, but do not know shure that I saw the American shore. I saw the Canada shore. My mate stood along aside of me on the top of the cabin.

Re-cross.

I gave no orders on my vessel after I came on deck, & don't know of any being given. I went on deck as fast as I could go. Trowbridge & Wilcox, of Detroit, own my vessel, & did at the time. I think Trowbridge & Wilcox also owned the tug. The tug association had control of the tug.

Re-re-direct.

Question. On cross-examination you stated to Mr. Hibbard that you could not swear positively as to what occurred. Now, state what you meant by that.

Answer. I meant that I might see these things a little differently and place the whole thing in a different position, if I had been on deck some time longer. After I got on the cabin, I think I could swear positively as to most everything I saw after that. It was only a short time after I got up before the collision occurred; there was not much to be seen or done.

P. H. O'NEILL.

Deposition of Peter Bell.

Peter Bell sworn:

I live in Detroit; I am between 34 & 35 years old; have sailed about 18 years, ever since I was a boy—9 seasons on the lakes, and about 9 seasons on salt water, and served apprenticeship 5 seasons of that time. Have never been master; sailed as mate of the Colton; 3 years as mate for G. W. Bessil; sailed one season as 2nd mate for Capt. O'Neil and as mate with him one season. In 1866 I was on the schooner Monitor.

52 I recollect the night of the collision between the Martin and the Cleveland; I had charge of the Monitor's deck from 12 o'clock until 4 that morning. We were in tow of the Muir, and the last one of 5 vessels, and passed up about the time of the collision; it occurred about astern of us; it might have been ¼ of point on the port quarter, but I think it was just about astern of us, as near as possible, in a straight line. The Martin passed us about 200 feet off, I should call it; may be a little more or less. They were about in a straight line in passing, but I think the barque was a little the nearest to us. The Cleveland, when the tow passed us, was astern, a little on our port quarter. At the time the barque hit the propeller the Cleveland was heading kind of an angle-way toward the Canada shore. She was hit by the barque somewhere aft the propeller's foremast, & was hit a kind of glancing blow, & at an angle of about 40° or 45°, I should think, and on the port side. When the barque hit the propeller, the barque was paying off to port, just as if her wheel was put to starboard, but I cannot say that it was. The tug was, a little before the collision, 1 or 1½ points off the starboard bow of the barque; but at the time of the collision I could not see the tug, she was shut in by the barque, by the mainsail or mainstay-sail.

Cross-examined.

I do not remember any of the other vessels in our tow; there were four besides us. When the barque passed us I was walking between the fore & main mast. I ran aft when the capt. did. When the collision happen the barque was 300 or 400 feet astern of us; maybe more or less. I could see plain enough. I never took great notice of the distance. I should call it 400 or 500 feet. When the collision happen the barque look to me as if she was paying off to port. We were just on the point of picking up a vessel that was to an anchor at Malden, and were going about the rate of 1½ or a mile per hour by the land when the barque passed us.

PETER BELL.

53 *Deposition of Peter H. Young.*

Peter H. Young sworn:

I reside in Detroit; I am 32 years old. In 1866 I was sailing on a tug; it was my third season on a tug. I was look-out on the tug McClellan at the time of the collision with the Martin. I am brother of the master of the tug. When I first saw the Cleveland she bore about one point or 1½ on our port bow & about 1½ or 2 miles off; she was showing first two bright lights. Our mate was on the pilot-house, and I was forward of the pilot-house, on the main-deck. The first colored light I saw was the starboard light, a green light. I could see the green light until she came very close, about ¼ of a mile from us; then I could see her red light. She commenced bearing off from us as soon as she showed her red light. She bore on our port bow until she showed her red light; then she bore nearly on to us, a little off, perhaps. She passed us on our port side, about 100 feet off, I should judge. I think her stem was nearest to us as she passed; there was not much difference. As she passed, I think she was sheering off towards the land, the Canada shore. About the time the propeller passed us I saw the Martin sheering from our port quarter toward the propeller; she was sheering a good deal; I could not tell exactly how much, about 5 or 6 points, almost broadside to the stern of the tug toward the propeller. At the time the propeller was struck by the barque, I think the propeller was heading pretty well on to the land, toward the eastward. The propeller was hit on the port side. As soon as the mate saw the propeller there was one whistle blown on the tug; the mate was then on the pilot-house; I was on the rail, on the port side, about amidships, opposite the pilot-house, when the whistle blew. Shortly after the first whistle blew we waited a few moments and blew another whistle. The propeller answered the second whistle almost immediately after. When the propeller answered the second whistle, the order was given on the tug to port a little.

54 Question. State whether, from the time the propeller was first made, up to the time of collision, she crossed your bows so as to be seen over your starboard bow.

Answer. No.

Question. State when you first anticipated a collision between the propeller & the barque.

(Objected to as improper.)

Answer. After the propeller passed us I thought there would be a collision from the vessel sheering so. I think the line of the Martin was leading out of the starboard bow; it was a pretty long line, between 300 & 400 feet; it was about an 8-inch line; I think it was a new line. The vessel steered very badly all the way down the river that night.

Cross-examined.

I have been tugging 3 seasons on this river on propellers; as look-outs man part of season before last and all last season. I live in Malden when at home. I am a soldier now in the U. S. Army; I enlisted 2 months ago for 3 years. I went on watch that night about dusk, and stand my watch as look-out all night. I sleep in the daytime. I slept all the day before, except when up at my meals. I do not know how long our tug is; I should say nearly 100 feet long. My station as look-out is most anywhere on deck where I can see, as I understood it. When I first saw the Cleveland's lights I was standing up forward of the pilot-house; I do not know whether that is the proper place for a look-out; you are not compelled to stand there; I am sure I was standing there when I first saw the bright light. Frank Horner was then at the wheel; I do not know where he is now. The mate was then on the pilot-house, and the capt. was not on deck. I came opposite the pilot-house, nearly amidships, after I saw the bright light; I was on the port side. I first saw the bright lights, and that bore 1 or 1½ points off from our port bow; that was a very few moments before the propeller passed us; I could not exactly tell how long. Shortly after that I saw
55 the green light. When I saw the green light she was about a mile off. The green light bore about the same as the other, 1 or 1½ points off our port bow. I continued to see the green light until she got very close; it seemed to be coming right toward us. I continued to see the green light until she got about a ¼ of a mile off; it may have been a little more or a little less. When the green light got the closest it was to us it did not bear so much off our port bow as when I first saw it. The green light kept closing in a little as it approached. I could not see the green light when the tug blew the first whistle; I did not notice it. I could not see the red light or green light either. I do not know why I could not see the green light. There was about 3 or 4 minutes between the two whistles of the tug, not any more than 4 minutes, it may have been less; I think not less than 3 minutes; I am sure it was not less than 2 minutes. The propeller answered the tug's second whistle. After that I saw the propeller's red light. The mate gave the order to the wheelsman on our tug; the mate was then on the pilot-house. When the propeller passed the tug I was standing near the pilot-house, on the port side.

The mate told the wheelsman to port a little when he gave the order to the wheelsman. I think the propeller passed us about 100 feet off; don't think it was any less. She was then bearing off toward the Canada shore, not as much as 2 or 3 points; can't tell exactly how much—about a point, perhaps, when she was abreast of us. I should think the propeller was then heading about N. E. I think the propeller, from that time to the time of the collision, kept sheering toward the Canada shore. I first noticed the vessel about the time the propeller was passing us; I mean the barque. When the collision happened, I cannot tell how the propeller was heading by compass. When I first noticed the barque laying square across our stern, I was standing about amidships. She was nearly across our stern, and that was before the collision & just after the propeller passed us. At the time of the collision, I think the barque was within a point of square across our stern. She struck the
56 propeller head on as near as I could see. I could not tell very well; it was in the night.

Question. You have said that when the propeller passed, she was heading about 1 point toward the Canada shore, & continued to

swing toward the Canada shore up to the time of the collision; you have said that the barque was headed within 1 point of square across your stern, and sheering toward the Canada shore, will you explain how, if these things are true, the barque could avoid hitting the propeller with her starboard bow?

Answer. I could not explain it; some older sailor might do so. The mate was on the pilot-house all the time until the collision; he stood up higher than I did. I could see all forward from where I was; he could see better than I on the starboard side, but I could see all forward as well as he could.

Re-direct.

When standing where I was, there is no obstruction to seeing forward. I saw no time-piece, but speak from my judgment.

Question. When you stated that the barque was heading nearly across your stern toward the Canada shore, state whether you meant she lay directly astern of you, or that her heading was across your stern?

Answer. She was off on our port quarter; her heading was across our stern, showing her starboard side to us.

Re-cross.

I think pretty near all of her was on our port quarter. I could see all of her from where I stood. When the collision occurred I say I do not think any part of her was astern of us. I think the whole of her was on our port quarter—her stern at the time of the collision was more than the width of a vessel on our port quarter. I mean away from right aft. I think it may have been 100 feet away from right aft. I think as much as 100 feet—no less.

I have talked with no one about this case since yesterday morning.

PETER H. YOUNG.

57 *Deposition of Bernard Carrol.*

Bernard Carroll sworn:

I live in Detroit, & am 22 years old. In June, 1866, I was fireman on board the tug McClellan. I have fired two seasons steady. I was on the McClellan about 4 months last season. I remember the collision between the Martin & Cleveland. I took my place at 12 o'clock that night. Our fire-room is about amidships, as to fore & aft; the fire-room is about 5 steps below deck. When on duty I am below about half the time and on deck ½ the time. I saw the Cleveland that night before she collided with the vessel. I was about amidships on deck on the port side; the propeller was ahead of us—over our port bow. I cannot say how far off she was; she was not far from us. I saw her red & bright lights at the same time. I did not notice the tow of the tug Muir. I remained where I was standing until the time of the collision. The propeller passed within or about 100 feet off. I did not notice the Martin until the propeller had passed us, when the propeller's stern was abreast of our stern. I looked aft and saw the Martin; the Martin was then sheering to port. I cannot say, by points, how much, but she was sheering considerable. She continued to sheer until she struck the propeller. After I came on watch I noticed once or twice that the Martin was steering badly; not after the tug. I heard three whistles while I was in the fire-room; two of them I knew to be from the tug, the other from another boat, I suppose from the propeller.

Cross-examined.

I did not come on deck until after I had heard the three whistles, perhaps 1 or 2 minutes after I heard them. I am not doing anything at present. I have not worked at anything since the close of navigation. Have been fireman 2 seasons. Before that I worked on a farm. I have sailed some before that, but not steady. I was a watchman on a passenger-boat; that is, watch the goods that they are not stolen. I was also porter on a boat. I was a watchman 3 seasons ago. About 4 years ago I stopped farming. I had farmed for several years; was raised on a farm. I drove a carriage in town here for 5 months. I have lived principally in Detroit & Saginaw. Since I quit farming, I have not staid in any other place.

58 BERNARD CARROLL

Deposition of John P. Young.

Capt. John P. Young sworn:

I am about 34 years old; I reside in Detroit; I am a sailor. H since 1852; on sailing vessels 6 or 7 years, on steam-vessels, off a 9 years, on the lakes. Have sailed as an officer on sail-vessels, as m also master of a small vessel. I have been an officer of a steam-ve years; this is my 3rd season as master. In 1866 I sailed the tug McClellan. I sailed her the whole season; never sailed her before. I was master of the McClellan at the time of the collision between the Martin and the Cleveland. I had 13 for a crew, including all hands. The collision occurred in the mate's watch. I left the deck that night at 12 o'clock. The McClellan is about 100 feet long. She draws 9 foot 6 aft, and about 8 feet forward; from her pilot-house to her stem is 16 or 18 feet; her breadth at pilot-house is between 16 & 18 feet. I should judge the floor of the pilot-house is about 4 feet above the main-deck. My room is forward a little, abaft and under the pilot-house in part; the floor of my room is right on the main-deck. The rail opposite the pilot-house is 18 or 20 inches above the main-deck; between the pilot-house & rail there is 3 or 3½ feet to the covering board. When I left the deck we were near Sandwich Point, 3 or 4 miles below Detroit. I next came on deck about abreast of Malden. I was on deck only a few minutes then, and come on to give the draft-book to the settler. I next came on deck when I heard something which woke me up. I got up, [up,] put on my boots, did not hurry myself much, then I came out on deck. I heard another whistle & hurried out. The propeller was then abreast of us; I should think 100 feet off. I think she was a little past amidships, past where I stood. I was just out of my room door on the port side. My door is not over 25 feet from the stem of the tug. When I looked aft I saw the vessel heading right for the propeller; the vessel was sheering to port. When I saw the
59 vessel had struck, the tow-line was parted then; as soon as I saw the tow-line was gone I ordered my mate to stop her, & to haul in the tow-line. When the barque struck she was heading well off to the eastward, about across our stern as well as I could see; it was dark. I could see the whole of the barque's starboard side from where I stood. When the propeller passed us she was shearing off to starboard. The propeller was struck a little on the port bow of the vessel; it hit the propeller on the port side a little forward of amidships. We picked up the Martin about 3 or 4 o'clock in the afternoon, before the collision. We had a good long line out—a good line, I think, about a 9-inch line.

swing toward the Canada shore up to the time of the collision; you have said that the barque was headed within 1 point of square across your stern, and sheering toward the Canada shore, will you explain how, if these things are true, the barque could avoid hitting the propeller with her starboard bow?

Answer. I could not explain it; some older sailor might do so. The mate was on the pilot-house all the time until the collision; he stood up higher than I did. I could see all forward from where I was; he could see better than I on the starboard side, but I could see all forward as well as he could.

Re-direct.

When standing where I was, there is no obstruction to seeing forward. I saw no time-piece, but speak from my judgment.

Question. When you stated that the barque was heading nearly across your stern toward the Canada shore, state whether you meant she lay directly astern of you, or that her heading was across your stern?

Answer. She was off on our port quarter; her heading was across our stern, showing her starboard side to us.

Re-cross.

I think pretty near all of her was on our port quarter. I could see all of her from where I stood. When the collision occurred I say I do not think any part of her was astern of us. I think the whole of her was on our port quarter—her stern at the time of the collision was more than the width of a vessel on our port quarter. I mean away from right aft. I think it may have been 100 feet away from right aft. I think as much as 100 feet—no less.

I have talked with no one about this case since yesterday morning.

PETER H. YOUNG.

57 *Deposition of Bernard Carrol.*

Bernard Carroll sworn:

I live in Detroit, & am 22 years old. In June, 1866, I was fireman on board the tug McClellan. I have fired two seasons steady. I was on the McClellan about 4 months last season. I remember the collision between the Martin & Cleveland. I took my place at 12 o'clock that night. Our fire-room is about amidships, as to fore & aft; the fire-room is about 5 steps below deck. When on duty I am below about half the time and on deck ½ the time. I saw the Cleveland that night before she collided with the vessel. I was about amidships on deck on the port side; the propeller was ahead of us—over our port bow. I cannot say how far off she was; she was not far from us. I saw her red & bright lights at the same time. I did not notice the tow of the tug Muir. I remained where I was standing until the time of the collision. The propeller passed within or about 100 feet off. I did not notice the Martin until the propeller had passed us, when the propeller's stern was abreast of our stern. I looked aft and saw the Martin; the Martin was then sheering to port. I cannot say, by points, how much, but she was sheering considerable. She continued to sheer until she struck the propeller. After I came on watch I noticed once or twice that the Martin was steering badly; not after the tug. I heard three whistles while I was in the fire-room; two of them I knew to be from the tug, the other from another boat, I suppose from the propeller.

Cross-examined.

I did not come on deck until after I had heard the three whistles, perhaps 1 or 2 minutes after I heard them. I am not doing anything at present. I have not worked at anything since the close of navigation. Have been fireman 2 seasons. Before that I worked on a farm. I have sailed some before that, but not steady. I was a watchman on a passenger-boat; that is, watch the goods that they are not stolen. I was also porter on a boat. I was a watchman 3 seasons ago. About 4 years ago I stopped farming. I had farmed for several years; was raised on a farm. I drove a carriage in town here for 5 months. I have lived principally in Detroit & Saginaw. Since I quit farming, I have not staid in any other place.

58 BERNARD CARROLL.

Deposition of John P. Young.

Capt. John P. Young sworn:

I am about 34 years old; I reside in Detroit; I am a sailor. Have sailed since 1852; on sailing vessels 6 or 7 years, on steam-vessels, off and on, 8 or 9 years, on the lakes. Have sailed as an officer on sail-vessels, as mate, & was also master of a small vessel. I have been an officer of a steam-vessel 6 or 7 years; this is my 3rd season as master. In 1866 I sailed the tug McClellan. I sailed her the whole season; never sailed her before. I was master of the McClellan at the time of the collision between the Martin and the Cleveland. I had 13 for a crew, including all hands. The collision occurred in the mate's watch. I left the deck that night at 12 o'clock. The McClellan is about 100 feet long. She draws 9 foot 6 aft, and about 8 feet forward; from her pilot-house to her stem is 16 or 18 feet; her breadth at pilot-house is between 16 & 18 feet. I should judge the floor of the pilot-house is about 4 feet above the main-deck. My room is forward a little, abaft and under the pilot-house in part; the floor of my room is right on the main-deck. The rail opposite the pilot-house is 18 or 20 inches above the main-deck; between the pilot-house & rail there is 3 or 3½ feet to the covering board. When I left the deck we were near Sandwich Point, 3 or 4 miles below Detroit. I next came on deck about abreast of Malden. I was on deck only a few minutes then, and come on to give the draft-book to the settler. I next came on deck when I heard something which woke me up. I got up, [up,] put on my boots, did not hurry myself much, then I came out on deck. I heard another whistle & hurried out. The propeller was then abreast of us; I should think 100 feet off. I think she was a little past amidships, past where I stood. I was just out of my room door on the port side. My door is not over 25 feet from the stem of the tug. When I looked aft I saw the vessel heading right for the propeller; the vessel was sheering to port. When I saw the
59 vessel had struck, the tow-line was parted then; as soon as I saw the tow-line was gone I ordered my mate to stop her, & to haul in the tow-line. When the barque struck she was heading well off to the eastward, about across our stern as well as I could see; it was dark. I could see the whole of the barque's starboard side from where I stood. When the propeller passed us she was shearing off to starboard. The propeller was struck a little on the port bow of the vessel; it hit the propeller on the port side a little forward of amidships. We picked up the Martin about 3 or 4 o'clock in the afternoon, before the collision. We had a good long line out—a good line, I think, about a 9-inch line.

The line was off the starboard bow of the barque. The barque steered pretty wild coming down the river that night.

Question. State whether you spoke to the officer of the Martin that night about her steering. If so, what?

(Objected to as incompetent.)

Answer. I hailed them several times, and asked them if they could not steer after us; I told them to steer after us; did not get any reply; I know the channel well were the collision occurred; in passing down, the course there is about S. S. W. From Bois Blanc Island to Bar Point is about 3 miles—a little more, perhaps; the collision occurred about one mile below the lights. After the Martin got clear of the propeller, she drifted a little below the propeller and got aground. I went to her to pull her off, but the tug Kate Moffatt came and got her off. The Martin grounded between ¼ & ½ mile from the place of collision; she drifted down with the current. I saw the propeller that night after she sunk. I towed the Martin & the crew of the propeller back to Malden. The propeller when she sunk was nearly to the channel-bank on the Canadian side.

Cross-examined.

Trowbridge & Wilcox owned the McClellan last season; Mr. Hunter was part owner. I did not hear any whistle from the propeller before the collision; I was in my room. Before I came out I heard no orders given on my boat. I came out on deck & stood by my room door; the door faces on the port side. I stood there till the collision occurred. I did not look at the compass to see how we were heading. I can't say, by the compass, how we were heading. I saw Bois Blanc light a little on our starboard quarter. In steering down there we keep the light a little over our starboard quarter. In steering S. S. W. the light is a little over our starboard quarter; I mean by our compass. By a vessel's compass, I think it would be between S. by W. ½ W. & S. by W. I was not on deck when we passed the Muir; I was in my room; had just lain down. I think the propeller passed us about 100 feet off; that was the first thing I noticed on coming on deck. After the collision I made no protest; do not know whether the tug did or not; never heard of the mate or owners making any.

Re-direct.

I made a statement before Ralph & Sanders, the inspectors of this port.

(Witness says he thinks the paper presented to him is a copy of the statement made before Ralph & Sanders, which is the same paper referred to in the deposition of Byron, hereto annexed, marked Exhibit "A.")

Frank Homer was at our wheel at the time of collision. I do not know where he is; I saw him last about 2 months ago on some tug-boat. His home is in Canada, back of Malden, but I got him in Detroit; he claimed Canada as his home. Our mate, Byron, was a good sailor-man; a temperate, prudent, careful man.

(Said Exhibit "A" is annexed under the statement & objections made in taking the testimony of Byron.)

J. P. YOUNG.

It is agreed by libellants' and respondents' proctors, in the presence

of the commissioner, and by him reduced to writing at their request, that all the aforegoing depositions, together with the deposition of Charles Reynolds, wheelsman of the propeller Cleveland, heretofore taken in the city of Cleveland by libellants, may be used and read
61 in evidence on the trial of the aforesaid three cases—the Northern Transportation Company of Ohio et al., William Phelps & al., and the Merchants' Insurance Company of Chicago et al., vs. the barque Maria Martin. It is also hereby agreed that the taking of testimony under the notice hereto appended is hereby closed.

J. ELISHA WINDER,
U. S. Commissioner.

Exhibit "A."

Exhibit "A." Copy.

J. ELISHA WINDER,
U. S. Commissioner.

Statement made this day by the officers of the tug McClellan, as regards the collision between the propeller "Cleveland" and bark "Maria Martin," on the morning of Friday, the 22 of June, 1866.

Tug "George B. McClellan" took hold of the bark "Martin" on Thursday, at 3 o'clock p. m., in St. Clair River, and towed her along without anything unusual happening until 2 o'clock on Friday a. m.

When a little below the light on Bois Blanc Island, at the mouth of Detroit River, we met the tug "W. K. Muir" with a tow of six vessels; we left the said tug and tow on our port hand, a good clearing distance; as we got near the end of the tow or near the last vessel in the tow, we made the propeller's lights about half point on our port bow. We saw the two mast-head lights and her green signal-light; we then blew one blast on our whistle and ported our wheel half a point.

The propeller did not answer our whistle. In a short time we gave another blast on our whistle.

The propeller answered the second whistle with one whistle.

Propeller shut in her green light and showed her red light after answering our second whistle; the propeller and tug passed each other about one hundred feet apart; as the propeller passed us the vessel was heading to the eastward, nearly at right angles with the tug, as she was heading at the time S. W. by S. ½ south.

About this time the tow-line parted, and the vessel collided with
62 the propeller, striking the propeller near amidships.

We stopped the tug as soon as we found the line had parted; captain took charge of the tug, and mate and crew hauled the line in.

We then turned around and went to the vessel; found the passengers from the propeller on board the vessel; the vessel had drifted away from the propeller, and the propeller had sunk; the vessel sagged on to the shoal. The tug "Kate Moffatt" took the vessel's line and straightened her around, when we took the line and towed her back to Malden. Our light was burning all right at the time we passed the propeller.

(Signed) J. P. YOUNG,
Master of Tug McClellan.

(Signed) JOSEPH his + mark BYRON,
Mate of Tug McClellan.

We, the undersigned engineers of the tug McClellan, concur in the tug McClellan blowing of the whistle, as herein stated.

(Signed) JOHN M. HUNTER,
Chief Engineer.

(Signed) PETER McGRATH,
2nd Engineer.

Exhibit "B."

Exhibit "B."

J. ELISHA WINDER, *U. S. Com'r.*

District court of the United States in and for the district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY of Ohio et al.
vs.
THE BARQUE MARIA MARTIN.

EASTERN DISTRICT OF MICHIGAN, *ss:*

William A. Moore, of Detroit, Michigan, being sworn, says that he is of counsel for the libellants in the above-entitled cause; that he verily believes that the testimony of Peter H. Young, Joseph Byron, John Hunter, Peter Young, Peter McGrath, Daniel Barnard, Patrick H. O'Neill, and one Joseph , and others, at present of Detroit, is material and necessary for the said libellants in the prose-
63 cution of said cause; that the said witnesses live at Detroit, more than one hundred miles from Milwaukee, Wisconsin, where the court at which this deponent expects the said cause will be tried is appointed by law to be held.

And this deponent further says that, as he is informed and believes, John S. Newberry, of counsel for the above-named barque Maria Martin, resides at Detroit, the place where the examination of said witness is expected to be taken; and that, as he is also informed and believes, the attorneys of the said barque resides at Cleveland or Milwaukee, more than one hundred miles from Detroit aforesaid.

W. A. MOORE.

Sworn and subscribed before me on this 4th day of February, A. D. 1867.

W'M D. WILKINS,
U. S. Com'r Cir. C't U. S., 7th Cir. and District of Michigan.

District court of the United States for the district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY OF Ohio et al.
vs.
THE BARQUE MARIA MARTIN, HER BOATS, &c.

Let Peter H. Young, Joseph Byron, John Hunter, Peter Young, Peter McGrath, Dan'l Barnard, Patrick H. O'Neill, and one Joseph , and others, the witnesses named in the above affidavit, be examined de bene esse before me accordingly, at my office, being the U. S. district clerk's office, at Detroit, Michigan, on the seventh day of February, inst., at 10 o'clock a. m. of said day; and let twenty-four hours' notice

be given to John S. Newberry, the said claimants' counsel, of such examination.

Dated Detroit, February 4, 1867.

WM D. WILKINS,
U. S. Commissioner C'r. C't U. S., 7th Circuit and Eastern District of Mich.

64 District court of the United States for the district of Wisconsin.

THE NORTHERN TRANSPORTATION OF OHIO ET AL.
vs.
BARQUE "MARIA MARTIN," HER BOATS.

SIR: You are hereby notified that Peter H. Young, Joseph Byron, John Hunter, Peter Young, Peter McGrath, Dan'l Bernard, Patrick H. O'Neill, & one Joseph , et al., will be examined de bene esse before me, at my office, being the U. S. district clerk's office, at Detroit, Michigan, on the seventh day of February, inst., at 10 o'clock a. m. of said day, as witnesses for the above-named libellants, according to the act of Congress in such case made and provided, at which time and place you are entitled by law to be present, and to put interrogatories to the said witnesses.

Dated Detroit, Feb'y 4th, 1867.

WM D. WILKINS,
U. S. Com'r Cir. C't U. S., 7th Circ't and E. Dist. of Mich'n.

To JOHN S. NEWBERRY,
Of Counsel for the above-named Claimants.

DISTRICT OF MICHIGAN, *ss:*

Julian G. Dickenson, being duly sworn, deposes and says that he served the notice, of which the above is a true copy, on the above-named John S. Newberry, by delivering the same to his clerk, at his office in the city of Detroit, on the fourth day of February, A. D. 1867, at 10 o'clock a. m. of said day.

JULIAN C. DICKENSON.

Sworn and subscribed before me on this 4th day of February, 1867, at Detroit.

WM D. WILKINS,
U. S. Comm'r Cir. C't U. S., 7th Dist. and Dist. of Mich'n.

Exhibit "C."

J. ELISHA WINDER, *U. S. Com'r.*

Notice to take depositions.

65 State of Wisconsin, district court of the United States' for the district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY OF Ohio et al.
vs.
THE BARQUE MARIA MARTIN.

The defendants will take notice that on Thursday, the 7th day of February, A. D. 1867, the plaintiffs above named will take the deposi-

tions of J. P. Young and sundry witnesses, to be used as evidence on the trial of the above cause, at the office of William D. Wilkins, U. S. commissioner, in the P. O. & custom-house building in the city of Detroit, in the State of Michigan, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

SPALDING & DICKMAN,
Attorneys for Plaintiffs.

To Messrs. WILLEY & CAREY,
Attorneys for Defendants.

Rec'd copy Feb. 2, '67.

WILLEY & CAREY,
Attorneys for Def't.

UNITED STATES OF AMERICA, *District of Michigan, ss:*

I, J. Elisha Winder, a commissioner duly appointed by the circuit court of the United States for the seventh circuit and eastern district of Michigan, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the testimony of the witnesses therein named is material and necessary in the causes, the titles whereof is in the captain of said depositions named, and pending in the district court of the United States for
66 the district of Wisconsin, and that the said witnesses lived at a greater distance than one hundred miles from Milwaukee, in the State of Wisconsin, the place of trial of said cause.

I further certify that a notification of the time and place of taking the said depositions was made out and served on the proctor for the claimants named in said deposition, to be present at the taking of the said depositions, and to put interrogatories, if he or they might think fit, of which notification a true copy, with the proof of the service of the same upon John S. Newberry, counsel for the claimants, by the afidavit of Julian G. Dickenson thereunder written, is hereunto appended and marked Exhibit "B."

I further certify that on the 7th & 8th days of February, in the year of our Lord one thousand eight hundred and sixty-seven, I was attended by W. A. Moore & F. J. Dickman, proctors for libellants, and by George B. Hibbard, proctors for claimants, and by the witnesses aforesaid, who were of sound mind and of lawful age; and the witnesses being by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions being by me reduced to writing in the presence of the witnesses aforesaid, and from their statements, and after carefully reading the same to the witnesses, they each subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up and directing the same, with my own hand, to the court for which the same were taken; and I certify that the same will be re-

tained by me until I shall deposite the same, with my own hand, sealed up and directed as aforesaid, in the post office at Detroit, Michigan, the place where the said depositions were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this eighth day of February, in the year of our Lord one thousand
67 eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first.

J. ELISHA WINDER, [SEAL.]
United States Commissioner, duly appointed by the Circuit Court of the United States for the Seventh Circuit and Eastern District of Michigan.

[5-cent stamp.]

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, William D. Wilkins, clerk of the circuit court of the United States for the seventh circuit and eastern district of Michigan, do hereby certify that I am well acquained with the handwriting of J. Elisha A. Winder, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States comissioner duly appointed, under and by virtue of the acts of Congress in such behalf made and provided, by the circuit court of the United States of America for the seventh circuit and eastern district of Michigan.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Detroit, in said eastern district of Michigan, this eighth day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[U. S. CT. SEAL.] W'M D. WILKINS, *Clerk.*

Cost of depositions endorsed on back:

Total commissioner's fees	$36 26
Eight witnesses, 2 days each, @ $1 50	12 00
Total costs	

Paid by libellant's proctor.

J. E. W., *U. S. Comm'r.*

District court of the United States for the district of Wisconsin.

I, J. Elisha Winder, a commissioner of the United States for the sixth circuit and eastern district of Michigan, do hereby certify that,
68 pursuant to the notice hereto annexed, I was, on the 27th day of February, A. D. 1867, [I was,] attended by Mr. Moore, proctor for respondents, and by Mr. Newberry, proctor for libellants, and, by consent of parties, I adjourned the taking of the annexed depositions until the ensuing day, at 2 o'clock p. m., at which time, to wit, on the 28th day of February, A. D. 1867, being attended by the respective proctors above named, at my office in Detroit, Michigan, I did proceed to take the following deposition on behalf of the said claimant:

office in Detroit, on the twenty-fifth day of February, 1867, at 5 o'clock p. m. of said day.

JULIAN G. DICKENSON.

Sworn and subscribed before me on this day of February, 1867, at

WM. D. WILKINS,
U. S. Comm'r Cir. C't U. S., 7th Cir't and Dist. of Mich'n.

District court of the United States in and for the district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY of Ohio et al.
vs.
THE BARQUE MARIA MARTIN.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Julian G. Dickenson, of Detroit, being sworn, says that he is agents for the claimants in the above-entitled cause; that as he is informed & as he verily believes, that the testimony of Francis Honer, at present of Detroit, is material and necessary for the said claimants in the defence of said cause; that the said Honer lives at Detroit, more than one hundred miles from Milwaukee, Wisconsin, where the court at which this deponent expects the said cause will be tried is appointed by law to be held.

72 And this deponent further says that, as he is also informed and believes, Messrs. Newberry & Pond the attorneys of the said libellants, reside at Detroit aforesaid.

JULIAN G. DICKENSON.

Sworn and subscribed before me on this 25th day of February, A. D. 1867.

W'M D. WILKINS,
U. S. Comm'r Cir. C't U. S., 7th Cir't & East. Dist. of Mich.

District court of the United States for the district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY of Ohio et al.
vs.
THE BARQUE MARIA MARTIN.

Let Francis Honor, the witness named in the above affidavit, be examined de bene esse, before me, accordingly, at my office, being the U. S. district clerk's office, at Detroit, Michigan, on the twenty-seventh day of February, 1867, at nine a. m. of said day, and let twenty-four hours' notice be given to Messrs. Newberry & Pond, the said libellants' attorneys, of such examination.

Dated Detroit, Feb. 25, 1867.

W'M D. WILKINS,
U. S. Com'r Cir't C't U. S., 7th Circuit and Dist. of Mich'n.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, J. Elisha Winder, a commissioner duly appointed by the circuit court of the United States for the seventh circuit and district of Michi-

gan, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Francis Honer is material and necessary in the causes the titles whereof is the caption of said deposition named, and pending in the district court of the United States for the district of Wisconsin, and that said witness lived at a greater distance than one hundred miles from Milwaukee, in the State of Wisconsin, the place of trial of said cause.

73

I further certify that a notification of the time and place of taking the said deposition was made out and served on the attorneys for the above-named libellants to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, of which notification a true copy, with the proof of the service of the same by the affidavit of Julian G. Dickenson, is hereto annexed.

I further certify that on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-seven, I was attended by Mr. Moore, proctor for respondents, and by Mr. Newberry, proctors for libellants, and by the witness aforesaid, who was of sound mind and of lawful age; and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and said deposition being by me reduced to writing in the presence of the witness aforesaid, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same were taken, and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post office at Detroit, Michigan, the place where the said deposition was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

74

In testimony whereof I have hereunto set my hand and seal this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first.

J. ELISHA WINDER, [SEAL.]
United States Commissioner, duly appointed by the Circuit Court of the United States for the Sixth Circuit and Eastern District of Michigan.

[5-cent stamp.]

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, William D. Wilkins, clerk of the circuit court of the United States for the sixth circuit and eastern district of Michigan, do hereby certify that I am well acquainted with the handwriting of J. Elisha Winder, whose name is subscribed to the annexed deposition, and that the signa-

ture to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner duly appointed under and by virtue of the acts of Congress in such behalf made and provided by the circuit court of the United States of America for the sixth circuit and eastern district of Michigan.

I testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Detroit, in said eastern district of Michigan, this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

[U. S. C'T SEAL.] WM. D. WILKINS, *Clerk.*

[5-cent stamp.]

Commissioner's fees, $9 45, paid by W. A. Moore, proctor, &c.
J. ELISHA WINDER, *U. S. Comm'r.*

Hearing cont'd.

APRIL 4, 1867.—This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded, it was adjourned until to-morrow morning.

APRIL 5TH, 1867.—This day came the parties, by their counsel,
75 and the hearing of this cause was resumed, and not being concluded, it was adjourned until to-morrow morning.

APRIL 6TH, 1867.—This day come the parties, by their counsel, and the hearing of this cause was concluded, and the court not being sufficiently advised held the same under consideration.

APRIL 9, 1867.—This day come Mr. Dickman, proctor for libellants, and Mr. Van Dyke, proctor for respondents, and filed the testimony taken in court by shorthand reporter, and same day filed stipulation, as follows:

Stipulation filed as to testimony.

United States district court, district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY of Ohio.
vs.
THE BARQUE MARIA MARTIN.

THE MERCHANTS' INSURANCE COMPANY
vs.
THE SAME.

WILLIAM PHELPS ET AL.
vs.
THE SAME.

It is hereby stipulated and agreed that the testimony taken in behalf of said libellants and respondents, (at the hearing of said cases in April, 1867, in Milwaukee, before Judge A. G. Miller,) in shorthand and afterwards written out in full by the reporter, and revised by Messrs. Van Dyke, Lynde, and Dickman, shall be deemed and treated as testimony regularly taken before a U. S. commissioner, signed by the witnesses and taken according to law, and shall be used as such in all stages of said cases. And no question is raised in said cases as to the ownership

of the propeller Cleveland, or barque Maria Martin, and the ownership of said vessels as alleged in the pleadings in the case Northern Transportation Company of Ohio vs. the Barque Maria Martin, aforesaid, is hereby admitted.

SPALDING & DICKMAN,
Proctors for Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

And said testimony, taken in court on the part of libellants, is as follows:

76 *Deposition of W'm H. Williams.*

The counsel for the said plaintiff produced—

Capt. W'm H. Williams, who, being duly sworn, testified as follows:

Q. Where do you reside?
A. In Oswego.
Q. What is your occupation?
A. A sailor.
Q. How long have you sailed?
A. About fifteen years.
Q. What waters have you sailed?
A. I have sailed mostly between Ogdensburg and Chicago. I was once on the pilot-boat Roomer, number 12. I was once on another pilot-boat named the Washington; I think about seven years ago. It might have been eight years ago. It was at the time of that great blow.
Q. Upon what kind of a vessel have you sailed; sail or steam?
A. Steam.
Q. How long have you sailed as an officer?
A. About four years; maybe 5 years.
Q. As master?
A. Yes, sir.
Q. Upon what kind of a vessel?
A. Steam.
Q. Upon what vessel were you employed in June, 1866?
A. Upon the propeller Cleveland.
Q. How long had you been on her at that time?
A. That was the second season as master.
Q. At the time of the collision between the propeller and the Martin, what port did you leave for; what ports were you bound for?
A. Bound for Detroit, Milwaukee, and Chicago.
Q. From what port did you sail?
A. From Cleveland.
Q. What time did you leave Cleveland?
A. About half past four o'clock on the 21st of June, in the afternoon.
Q. What was your cargo, if you had any?
A. Merchandize.
Q. What port did she first leave?
A. Ogdensburg.
Q. When did she leave Ogdensburg?
A. I cannot tell exactly the time without looking at my log.
Q. Well about how long had you been out?
A. It was about 3 days, I suppose. I couldn't tell exactly the time.

77 Q. You had been 3 days on your propeller since you left Ogdensburg?
A. Yes, sir.
Q. What was her condition as to being sound?
A. She was all right, strong, and in good working order.
Q. How large a crew did she carry?
A. Nineteen.
Q. Including yourself?
A. Yes, sir.
Q. Who was that crew, briefly; how many engineers did you have?
A. Two engineers and two firemen.
Q. Any mates?
A. Two mates, two wheelsman, two watchmen, six deck-hands.
Q. Was there a look-out?
A. There was a look-out & watchman.
Q. Any one else?
A. A steward, cabin-boy, and cook, and a porter.
Q. Had you a full crew?
A. Yes, sir.
Q. At what time, if you know, were you on deck that night before you turned in? State when you left the deck.
A. I left the deck at 12 o'clock.
Q. Where was the propeller at that time?
A. She was between the Clay Banks and Point aux Pelee.
Q. How far is that below the mouth of the Detroit River? How far were you at the time you left the deck from the Detroit River?
A. I should think about 18 miles, probably more. I could not tell exactly as to the distance.
Q. Who took charge when you left the deck?
A. Mr. Davis, the first mate. It was his watch.
Q. How long had he sailed with you?
A. That was the second year as mate.
Q. When you left the deck what did you do?
A. I went into my room and went into the cabin, and turned in immediately. I took off my coat and boots and lay down.
Q. Did you go to sleep?
A. Yes, sir.
Q. When did you next go on deck?
A. Off Bar Point.
Q. State whether you were called at the time you went on deck that night.
A. I don't recollect whether I was called or not. I got up, supposing I was called.
78 Q. State what your practice has been before going into the river.
(Objected to and question waived.)
Q. Where was the vessel when you came on deck?
A. Right off Bar Point, sir.
Q. State whether she had then taken her course up the river.
A. She had.
Q. State how you determined that.
A. I came on deck out of my room and looked along the land, and walked along forward and asked my mate how she was going, and he told me north by east.
(Further statements in regard to the conversation were objected to.)
Q. What was your course coming up the river?

A. I always steer north by east coming up the river; when we make the light I usually steer right for it.

Q. From your knowledge, how were you heading then by the light?

A. I should think we were heading north by east as near as possible.

Q. When you came on deck, who took charge of the deck?

A. I took charge of the deck.

Q. Where did you go?

A. Right forward, by the capstan.

Q. Who was there at that time?

A. Mr. Davis, & Mr. Coonely, the look-out.

Q. Where was Mr. Coonely?

A. He was forward by the capstan.

Q. Was the place when he stood the proper place for the look-out to stand?

A. Yes, sir.

Q. State when you first gave an order, if you gave one, and what it was.

A. I gave no orders until the whistle blew.

Q. The whistle of what vessel?

A. The whistle of the tug.

Q. The tug McClellan?

A. Yes, sir.

Q. State whether you had seen a light prior this time; and, if so, how long before.

A. I saw the light from the time I came on deck.

Q. What lights did you see on the tug?

79 A. I saw the red light, and her bright light; I saw the bright light of the tug, and the red light of the barque.

Q. How did these lights bear?

A. They bore about half a point on the starboard bow.

Q. Where were you standing at that time?

A. Right forward of the capstan.

Q. About amidships as to position?

A. Yes, sir; about amidships; a little to the starboard; just forward of the capstan; probably not over a foot or two from the capstan.

Q. How far from you were those lights at that time?

A. They were two miles or about two mile when I first made them.

Q. How far were those lights when the whistle blew?

A. I think they were over half a mile.

Q. How did those lights bear then when the whistle blew?

A. About ahead, as near as I can calculate.

Q. When the whistle blew upon the tug, what did you do, if anything?

A. I sent Mr. Davis, my mate, to answer.

Q. What did he do?

A. He went upon the upper deck and answered them by giving one whistle.

Q. How soon did he go upon the upper deck?

A. Right away, sir.

Q. Did you give any other order at that time?

A. I ordered my wheel aport right away after I gave Mr. Davis the order to answer the whistle.

Q. State which order was given first, the order to "port" or to sound the whistle.

A. I gave the order to answer the whistle, and to "port" afterward.

Q. State if you received any answer from the man at the wheel; and, if so, what was it.

A. I did; he answered, "Port."

Q. State whether the whistle blew before you received the answer from the wheel or after you received the answer.

WITNESS. The tug's whistle do you mean?

COUNSEL. No, sir; your own whistle in answer.

(Witness hesitates.)

The question is, did you receive the answer from your wheelsman before your own whistle sounded in reply to the whistle of the tug?

A. Yes, sir.

Q. Who was in the wheel-house at the time?

A. Charles Reynolds.

Q. State whether your propeller did obey this order, & swing
80 to starboard.

A. She did.

Q. State what was your next order.

A. Steady.

Q. When was that order given?

A. When I swung clear of the barque.

Q. When you had ported so far as to clear the tow?

A. Yes, sir.

Q. What did the single whistle signify?

A. That we should both pass to the right.

Q. Which sides of the vessels would pass then?

A. We should pass on the port side of the tow.

Q. And the answer you gave, what did that signify?

A. "All right."

Q. What was the next order you gave this order "steady?" When was that given?

A. When I had swung clear of the tow, I ordered "steady;" when we had swung clear of the tug and the barque.

Q. How long did you run, as near as you can judge, after the order to "port," before the order to "steady?"

WITNESS. From the time I ported until I "steadied?"

COUNSEL. Yes, sir.

WITNESS. I could not say exactly as to the time.

Q. Will you, as near as you can judge? Of course, you could not tell exactly without a time-piece. About how long was it?

A. Well, probably a minute. I can't tell as to the time exactly.

Q. When the order was given to steady, where was the tug; how did her light bear?

A. We hadn't got up to her yet; she was off on our port bow.

Q. What lights did she show then?

A. She showed a red light and a bright light.

Q. What else, if anything, did the barque show?

A. A red light.

Q. How near were you abreast of the tug when the order was given to "steady;" how far ahead was she?

A. Well, probably thirty or forty feet; maybe further; I can't tell the exact distance.

Q. How near were you abreast of the tug?

WITNESS. How near did we pass to the tug?

COUNSEL. Yes, how near were you together when you were
81 abreast of her?

A. From one to two hundred feet.

Q. When you came up abreast, which way were you headed as to your line of direction?

A. We had swung a little to starbord, perhaps; I could not say certainly that we had.

Q. Before you came up abreast the tug, how was the barque following the tug?

A. She was pretty nigh in line, as near as I could see.

Q. Showing what light?

A. A red light.

Q. Did she show any other light?

A. Not until I got pass the tug.

Q. When did you see any other light on the Martin, and what light was it?

A. I saw a green light on the Martin when it was about 50 feet from us.

Q. Where you then?

A. Right forward of the capstan.

Q. Where from your propeller was the vessel at that time in relation to the tug?

A. I had got passed the tug then, my wheel hard aport, and her red light shut out, when I saw the green light.

Q. What was your order, if any, at that time?

WITNESS. When she shut her light out?

COUNSEL. When you saw the green light just referred to?

A. I told my wheelsman to port the wheel, and he sang out, "Wheel aport." I sung out, "Hard aport," and he replied, "Hard aport," and I kept the wheel hard aport.

Q. Did you give any other order?

A. No, sir.

Q. State whether your propeller swung to the starboard or not in obedience to that order.

A. She did.

Q. Where was the barque when you gave that order, "Hard aport," and your propeller swung to starboard; which way was she heading—the propeller?

A. She was heading to the Canada shore.

Q. In obedience to what order, if any order?

(Question objected to; waived.)

Q. Which way was she swinging then?

WITNESS. Which vessel, sir?

COUNSEL. The Martin.

WITNESS. She was swinging to the Canada shore—to the port.

Q. State if she struck you; and, if so, where and how.

A. She came into us right forward of the fore-rigging; her
82 flying-jibboom struck us forward of the foremast, and took out three or four inches.

Q. Did it strike the pilot-house?

A. Yes, sir; and took the pilot-house overboard. The bowsprit struck us amidships—in the afterpart of our amidships gangway.

Q. How did she come into you; what portion did she damage, if any?

WITNESS. I don't know as I understand your question fully.

Q. When she came into you, how did she damage you?

A. She cut us down below the bilge.

Q. What portion of her went into you?

A. Her stem.

Q. What was the effect of the blow?

A. The effect of the blow was that she cut below the bilge, and caused us to sink. She cut us clear down below the bilge.

Q. Was that all the damage done to you?

A. She tore away the gangway amidships and the bulwarks as far as the hall to the cabin.

Q. The effect of the damage was to sink you?

A. Yes, sir; the bowsprit of the barque was into us and through the cabin, and, when the propeller sunk, the pressure on the bowsprit lifted a part of the cabin right off; and when she got clear of the barque she swung with her head down stream and sunk.

Q. How long after she struck you before she sunk?

A. About ten minutes, I should think.

Q. Did you drift any?

A. Yes; I should think we drifted a little.

Q. Do you know how strong the current is there, captain?

A. I think it is about 2 miles or 2½.

Q. In what depth of water did she sink?

A. In 28 feet.

Q. State whether you helped raise the propeller.

A. I helped to raise her.

Q. Were you there while she lay wrecked?

A. Yes, sir.

Q. Did you know her precise position then as she lay there sunken?

A. Yes, sir.

Q. What landmarks or guides are there there by which you
83 determined that position, if any?

A. I could determine where she was by the land-marks on the American shore, and the land-marks on the Canada shore.

Q. How far was she from the Bois Blanc light as she lay there sunken?

A. About a mile and five-eighths of a mile.

Q. Did you measure the distance?

A. I did.

Q. Just give the precise measurement then from where she was sunken to Bois Blanc light.

A. The distance is eighty-five hundred feet from where she lay sank to the light.

Q. State if you have any means of knowing where you were in the river when that whistle was first blown—when you answered the whistle of the tug.

A. I have, sir.

Q. What are they?

A. There is a little clay bank inside of the point—a kind of raise on the shore—and on that hill there are some willow trees; and the land there kind of breaks away on both sides and forms a kind of sugar-loaf there as you come up the river. It is a place that every person takes notice of coming up there.

Q. State whether you noticed it on the night of the collision.

A. I did, sir.

Q. State where you were, in relation to that point, when whistle was blown.

A. We were about abreast there when the whistle of the tug was blown.

Q. State whether you heard more than one whistle from the [the] tug; and, if so, when did you hear it?

A. After we had answered the first whistle she whistled again.

Q. How soon after?

A. Right away.

Q. State if you know the distance between that point where you heard this first whistle and the point where the propeller lay sunken.
A. I do, sir.
Q. What is that distance?
A. 2,640 feet, I think.
Q. By actual measurement?
A. Yes, sir.
Q. What kind of a night was that, captain?
A. It was quite a clear night; that is, the afterpart.
Q. Well, at the time you came on deck at the mouth of the river up to the time of the collision?
A. A good, clear night.
Q. Any moon?
A. No moon.
Q. Any stars?
A. Yes, sir.
Q. Any thick mist or fog?
A. No, sir.
84 Q. Was it a good or a bad night to see in?
A. It was a good night.
Q. State where you were when the barque commenced swinging to port.
A. I was abreast of the tug.
Q. Your bow, or midships, or stern, or what?
A. I was right abreast of the tug from where I was standing; just in front of the capstan.
Q. What is the length of the propeller?
A. 140 feet, over all.
Q. About what is her burthen?
A. 461 tons.
Q. How soon after you gave the order "aport" did you give the order "hard aport?"
A. Right away, sir.
Q. Captain, in your judgment, about how long was it from the time you blew that whistle until you came up abreast of the tug?
A. I should think about three minutes; it might have been more.
Q. State whether you saw the green light of the tug at all in coming up to her.
A. No, sir; I did not.
Q. The paddle-wheel of the propeller—about what size is it?
A. Nine feet.
Q. Which way does it turn?
A. It turns to port.
Q. Has it a tendency to sheer one way or the other?
A. It sheers a little to the starboard.
Q. What lights did you carry?
A. Two masthead lights, a red and green light.
Q. State if the lights of the propeller and barque and tug were all good lights, and were all properly burning?
(Objected to; question waived.)

Cross-examination.

Q. Captain, how old are you?
A. I am 30 years old the 16th of this month.
Q. How long had you been on the Cleveland at this time?

A. This was the second season.
Q. How long had your mate been with you?
A. It was his second season.
Q. He was on deck at that time?
A. Yes, sir.
Q. Who was look-out? What his name?
A. Coonely.
Q. How long had he (Coonely) been with you?
A. That season.
85 Q. Now you say you left Cleveland on the afternoon of the 21st, about ½ past 4 o'clock?
A. Yes, sir. I can't tell exactly as to the time, but I judge it was about that time.
Q. Now, about how long did it take you to get out of the piers there and get on your course?
A. Well, I don't know exactly; I can't say.
Q. Well, what is your best estimate on that; how long did it take you to get out of the harbor at Cleveland and get outside of the piers and get on your course?
A. Well, it might take say ten minutes; it might take ten minutes and it might not take so long.
Q. Is that the best estimate of the time it took you to get out of the piers and get on your course—10 minutes?
A. I don't think it would take us as long as that.
Q. Now give us about the time when this collision happened?
A. Between two and three o'clock.
Q. Of what night?
A. Of the 22nd; in the morning.
Q. How far is it from Cleveland up there to the point of collision? (The witness remains silent.) Don't you know how far it is from Cleveland to where this collision happened? (Witness still continues silent.) Captain, let me ask you another question. What makes it take you two or three minutes to answer a plain question like that? (Witness still silent.) What is the reason do not answer a plain question?
WITNESS. I think it is about 75 miles.
Q. From Cleveland, then, to the place where the collision happened is abont 75 miles?
A. That is what I should guess it; I could not tell without a little time to figure.
Q. Now where do you say you were when you turned in that night?
A. Between Clay Banks and Point Aux Pelee.
Q. How far are the Clay Banks from Point Aux Pelee light?
A. I should think about 20 miles or over.
Q. Now, how far above Point Aux Pelee light were you when you turned in?
A. I could not say, sir.
Q. You say you went to sleep?
A. Yes, sir.
Q. About what length of time, if you can form any opinion of that, had you been asleep when you went on deck?
A. I could not say.
86 Q. Are you aware what it was that called you on deck?
A. I suppose I was called by the mates.
Q. Have you any recollection about who it was that called you on deck?
A. No, sir.

Q. Now you say the vessel was right off the Bar Point, was she?
A. Yes, sir.
Q. You didn't look at the compass at any time, I suppose?
A. No, sir.
Q. You went forward and stood by the capstan?
A. Yes, sir.
Q. That is on the main-deck, ain't it?
A. On the promenade-deck.
Q. How far was that from your compass, where you stood?
A. About 15 feet; between 10 and 15 feet.
Q. Who stood there with you?
A. Mr. Davis and Mr. Coonely.
Q. The mate and the look-out?
A. Yes, sir.
Q. Were you then standing together?
A. Yes, sir.
Q. Now how long did you and Davis and Coonely stand there together after you went on deck?
A. Until the whistle from the tug blowed.
Q. You all stood, then, by the capstan from the time you first went on deck until the whistle from the tug blew?
A. Yes, sir.
Q. Now in the mean time did any of you look at the compass?
A. I did not.
Q. Do you know that anybody else did?
A. Not after I came on deck.
Q. You had charge, then, when you was on deck?
A. Yes, sir.
Q. Where was your compass?
A. Just by the wheel-house; just forward of the wheel.
Q. Now from the place where you stood—you, Davis, and Coonely—where did you have to go to look at the compass? Describe how you had to go to look at it.
A. We had to go above into the pilot-house, or above the pilot-house, and look through a window to see it, on the hurricane-deck.
Q. How far is the hurricane-deck above the promenade-deck?
A. About six feet; it may be over that.
Q. Now where is the whistle-string?
A. Attached right to the rail, where it could be reached from the pilot-house

87 Q. Before you could reach the whistle-string where did you have to go from where you stood there by the capstan? Describe how you reached the whistle-string from where you stood.

A. I had to go from there on to the rigging and up some steps to the hurricane-deck, and go on to the steps of the pilot-house. By going up the steps of the pilot-house you can ring it from the hurricane-deck.
Q. During all this time then, from the time you went on deck, down to the time you heard the whistle, you could not reach the whistle-string to make a signal without going into another deck.
A. No, sir.
Q. About how was she heading when you came on deck?
A. I came on deck and asked my mate.
COUNSEL. I am not asking you, sir, what your mate said. I want to know how you knew which way she was heading.
A. Somewhat by the shape of the land.
Q. What are the marine land-marks at the mouth of the river? I don't

know myself, and I just want to find out from you.

(Witness remains silent.)

Where is the mouth of the river then?

A. At Bois Blanc; about half a mile below there.

Q. You call the mouth of the river, then, about half a mile below Bois Blanc light?

A. Yes, sir; I would like to make an additional remark about that course business. I knew by the look of the land and the lights of the tug that we were on our course, north by east.

Q. You judged by the light—by Bois Blanc light—that you were nearly on your course?

A. Yes. sir; but that was after I had asked the mate for information.

Q. Then you steered along there, as I understand you, by the shape of the land, by the tug's light, and by the Bois Blanc light.

A. No, sir; I didn't steer by them.

Q. Then what do you mean when you say you judged you was on your course by the shape of the land, and by the tug's light, and by the Bois Blanc light, if you were not steering by them? Didn't you judge that you was on your course by the Bois Blanc light?

A. I could not judge by that in the night, unless I could see my compass.

Q. You could not tell where you were in the river, then, by the Bois Blanc light, unless you saw your compass, could you?

A. Not in the night. I tell pretty close where I was if it was so I could see.

88 Q. Were you governed some with respect to your course by the shape of the land and by the lights of the tug?

A. No, I was'nt by the tug, or the shape of the land.

Q. Then what do you mean a little while ago when you said you judged you were on your course, partly by the tug's light and the way the tug was going?

A. The tug was coming down with a red light.

Q. Did you form your judgment from that?

A. No, sir, I did not.

Q. Now, at the time when you saw these things from which you judge how you were heading, about where were you on the river?

A. I was off Bar Point.

Q. How far is Bar Point from Bois Blanc light?

A. About two miles and a quarter; somewheres along there. We usually steer by the compass?

Q. Then you didn't form your judgment as to where you was going by those things you have mentioned, but you say you formed them by the compass?

A. I judged by the lay of the land we were going on our usual course up the river.

Q. How far off did you pass Bar Point when you passed there?

A. Probably three-quarters of a mile.

Q. Could you see any land-marks on the American side when you passed?

A. No, sir.

Q. Then you judge of your position in the river when you were off Bar Point three-quarters of a mile, by the shape of the land?

A. No, sir; by the compass.

Q. How is the Canada shore along there; is it low?

A. Yes, sir.

Q. Very low and sandy, is it not?

A. Some parts of it is.
Q. Is it not all so now, captain?
A. No; just beyond the point there is a land-mark caused by an elevation of sand, and some willow trees grow on it.
Q. That was the place you heard the whistle sound?
A. Yes, sir.
Q. The raise is some distance from Bar Point, is it not?
A. Yes, sir; it is.
Q. Did I understand you to say you formed your judgment, by
89 the lay of the land at Bar Point, of your position in the river?
A. No, sir; I didn't say so.
Q. Then what was the guide from which you formed your judgment of your position or course in the river by the shape of the land?
A. My compass was the only guidge I had.
Q. Then am I to understand that you did not form your judgment of your position or course in the river by the shape of the land, but that your compass was your only guide?
A. I didn't form any opinion about it at all at the time.
Q. You didn't form any opinion about where you were in the river at the time; is that so?
A. I looked to see where we was.
Q. But you didn't form any opinion about it?
A. I thought we were all right.
Q. You were not guided by the shape of the land in the formation of your opinion?
A. I was guided by my compass.
Q. Now, when you first saw the tug's light and the barque's light, did you see them both at the same time?
A. Well, pretty much at the same time.
Q. You will repeat if you please, about how it bore as to your bow when you saw it.
A. I think it bore off our starboard bow about half a point.
Q. When you first saw it?
A. Yes, sir.
Q. Now, about how far off did that appear to be then, in your judgment?
A. About two miles.
Q. Did you give any orders then?
A. No, sir.
Q. You run right along on the same course?
A. Yes, sir.
Q. When you heard the whistle blow, how did the lights bear from you then?
A. They bore pretty near right ahead; a very little on the starboard bow, I think.
Q. About how far off did they appear then?
WITNESS. When?
COUNSEL. When you heard the whistle?
WITNESS. About three-quarters of a mile off, to the best of my judgment.
Q. Then your judgment is, you run in that way for about a mile.
A. I don't say how far we ran.
Q. Now, you were still standing at the capstan, were you, when you heard this first whistle?
A. Yes, sir.
Q. You knew it was from the tug?

A. Yes, sir.
Q. And your first order was to blow the whistle?
A. Yes, sir.
90 Q. What did you say?
A. I told the man to "answer."
Q. Did the mate answer with one whistle?
A. Yes, sir.
Q. Then you gave the order to "port?"
A. Yes, sir.
Q. You were still standing at the capstan?
A. Yes, sir.
Q. Now, didn't you tell the mate to answer by two whistles?
A. No, sir.
Q. You did'nt say anything about two whistles?
A. No, sir; not to my recollection.
Q. Are you positive you did not?
A. Yes, sir; I am.
Q. When you gave the mate the order to answer with one whistle, what did he do?
A. The mate was standing by the capstan, and he started right away as soon as I told him.
Q. And you gave the order then to "port?"
A. Yes.
Q. Before he answered with the whistle?
A. Yes, sir.
Q. Now, how long? I believe I understood you to say on your direct examination that the tug whistled again?
A. Yes, sir.
Q. Was that after you answered?
A. That was after we answered.
Q. You are equally sure of that, I presume?
A. Yes, sir; I heard the whistles.
Q. Now, am I to understand you that the tug blew but one whistle before you answered?
A. Yes, sir.
Q. If it blew more than once you didn't hear it?
A. I didn't hear it.
Q. Now, did you remain standing by the capstan?
A. Yes, sir.
Q. Did you stand there when the collision happened?
A. Yes, sir.
Q. Right on the same spot?
A. No, I was a little further forward.
Q. Now, right here, captain, I will ask you if this is true: (Reads.) "That the captain" (meaning you) "told the mate to go up and sound two whistles, and just as the mate got hold of the whistle-string the tug blew another, which the captain told the mate to answer. The captain said to the mate, 'Blow one whistle,' and said to me, 'Port.'" Is that true or false?
A. I never told the mate to blow two whistles.
Q. Then that statement is false, is it?
A. I haven't any recollection of any such thing as that.
Q. Is that all that you desire to say about it then, that you have
91 no recollection about it?
A. I have no remembrance of it.

Q. You will not undertake to say then but you might have said it, will you?

A. I don't think I said it.

Q. You will not undertake to say but that you might have said it, will you?

A. I have no recollection of saying it.

Q. That is all the answer you will give to that question, is it?

A. Yes, sir.

Q. Now, do I understand you that you stood there all the time, up to the time of the collision, forward of the capstan, only you went a little in advance of your first position; is that right?

A. That is right.

Q. Nor all that time you didn't look at the compass?

A. No, sir.

Q. Now, when you gave this order to the wheel to "port," you simply said "port," didn't you?

A. "Port," yes, sir.

Q. And after the order "port," the next order given was "steady?"

A. Yes, sir.

Q. How much do you think vessel had swung from the time until you gave the order "port" until you said "steady?"

A. She had probably swung a point or a point and a half.

Q. Your judgment is, she swung a point or a point and a half?

A. Yes, sir.

Q. Now, were was she with reference to the tug when you said "steady;" how did the tug bear from you at that time?

A. It bore off here, (pointing.)

Q. About how much—we have got to get it on paper—about how much off your bow?

A. She bore off about a point, I should think, or a point and a half, on our port. I can't tell exactly how she was running. I know I steadied her when she swung clear of the tow, or when I thought I was clear. I was heading off clear of the barque and tug.

Q. And the tug bore, to the best of your judgment, about a point or a point and a half on your port bow?

A. Yes, sir; she might have bore further.

Q. How far off did she appear to be then?

A. About 50 feet, I should think, ahead of us.

Q. About 50 feet ahead of you; now, how far from you across the stream?

A. I don't exactly know.

92 Q. She bore about a point on your port bow and was about 50 feet ahead?

A. A little more than a point on our bow, I should think.

Q. She was about 50 feet from you then?

A. Yes, 50 feet before we should get up abreast of her.

Q. How was the distance across the stream, I mean, supposing she was abreast?

A. A hundred or two hundred feet at the time when I said "steady."

Q. About how far did you run under that steady wheel?

A. Until we was abreast the tug; until I saw the barque shut out her red light.

Q. You was under the steady wheel until you were about abreast of the tug?

A. Yes, sir.

Q. Then you saw the red light shut out?

A. Yes, sir.

Q. How did the red light bear off your bow the last you saw of it?

A. It bore off my port bow.

Q. How much?

A. Well, I can't say how much.

Q. Well, give us your best judgment about it, according to the best of your judgment at the time you saw the red light shut out?

WITNESS. What light, the red light?

COUNSEL. I ask you the plain question, the last time you saw the barque's red light when it was shut out, about how far off on your port bow did it bear?

A. Well, about 150 feet off our port, a point and a half to two points off.

Q. You gave the order "aport" and "hard aport" at once, did you?

A. I sang out, "Port" and the wheelsman answered, "Port," and I sang out, "Hard aport," and the wheelsman answered, "Hard aport."

Q. When you gave the order "aport" first just before you said "hard aport," how was your vessel heading with reference to the Canada shore; was she heading toward the Canada shore?

A. A little that way, sir; yes.

Q. Then she would begin to swing when you gave the order "port" immediately towards the Canada shore?

A. After she got the wheel she would swing.

Q. She would instantly, would she not?

93 A. Yes, sir; and the more wheel you give her, the quicker she would swing.

Q. She would mind the wheel instantly, if she was headded toward the Canada shore?

A. Yes, sir.

Q. Would she swing faster going up stream than she would down?

A. I should think so.

Q. Then she must have swung off very fast toward the Canada shore?

A. She swung off toward the Canada shore.

Q. Did she swing very fast under those circumstances? Now, if she was heading toward the Canada shore, and was going up stream, and was kept "hard aport," would she not be likely to swing pretty fast toward the Canada shore under those favorable circumstances?

A. She would swing fast as soon as she got the helm.

Q. Well, under those circumstances, would she not swing fast toward the Canada shore?

A. She would not at the moment; not until she got the wheel.

Q. How many points do you think she swung from the time you first said "port" until the barque struck her?

A. I don't think she swung over half a point.

Q. Is that as fast as your vessel will swing under those circumstances?

A. I don't think she would swing over half a point.

Q. She would swing faster than the Maria Martin would, coming down stream. I will ask you the question if the Maria Martin coming down stream heavily loaded and going slower than you were, would not the propeller swing faster than the Maria Martin?

A. I don't know how she (the Martin) swings.

Q. Did not you ever sail a vessel?

A. I never sailed a vessel; no, sir.

Q. Was you ever on a sail-vessel in any capacity, a large one?

A. I was on a pilot-boat two winters?

Q. Have you ever been on such a vessel as the Maria Martin was?

A. No, not in any capacity. I have been upon them.

Q. Then you can't tell how much a vessel would swing under such circumstances, am I to understand you?

A. No, sir; I can't tell. If a man was aboard of her he could
94 probably tell.

Q. Well, take an ordinary vessel, heavily loaded, and going down stream, slower than the Cleveland was, and at about the same speed by the land, would not your boat swing faster than she would?

A. I think she would if she was light.

Q. Suppose she was heavily loaded?

A. Yes, I think she would swing the quickest.

Q. Would she not swing a good deal the quickest?

A. I could not say. I could not tell how long I run under that port wheel after I gave the first order "port" before I said steady. To the best of my knowledge, I think, for about three minutes. During that time, I think, we swung about a point or a point and a half. I run under that port wheel until we got clear of the tow. I could not tell the distance. I cannot tell as to the distance at all. I have no opinion about it. I had an opinion about it that night. Probably we ran a minute, but I can't tell as to the distance. We were over half a mile from the tug when I first heard the whistle. We might have been three-quarters of a mile distant; I gave the mate the order to answer, and the order "port" afterward. I gave the order to answer and the order "aport" immediately after. There was no interval between the two orders, only enough to give the orders. I run under that order until we got within 50 feet of the tug, and then I gave the order "steady." We were about abreast the Sugar Loaf when they blew their whistle. The Sugar Loaf is on the Canada side. I remember noticing it that night. I always notice it coming up the river. This channel is over the boundary line; it is a Canada channel. I remember of noticing those land-marks at that time. I always notice them. I never go up there in the night but I notice them. After the collision, I don't think my vessel sheered toward the Canada shore at all. She drifted down some. I should think she drifted about a quarter of a mile before she sunk. I could not say how far she drifted. I made a protest. I made the protest in Detroit. I know the gentleman before whom it was made, but I do not recollect his name at present.

(The protest in question was here requested by the defendant
95 to be handed over to it for inspection, which request was complied with by the libellants.)

2½ P. M.—Cross-examination continued.

The Cleveland was loaded with merchandize. She had on about 290 tons, and was drawing about ten feet aft and eight and a half feet forward. Her tonnage is 461 tons.

Q. She was lifted pretty well up then, forward, out of the water?

A. She was drawing 10 feet aft and 8½ feet forward; somewhere near that.

Re-direct examination.

After we came into the river, and up to the time of the collision, we were running at the rate of about seven miles an hour.

Q. You said you left Cleveland at about four or half past four o'clock; do you mean you left the dock or the piers at that time?
A. The piers
Q. You had got clear of them?
A. Yes, sir.

Re-cross-examination.

Q. You were going by the land about six or seven miles an hour?
A. Yes, sir.
Q. You mean when you were in the river?
A. Yes, sir.

Deposition of Richard Davis.

And the counsel for the said plaintiff produced—

Richard Davis, who, being duly sworn, testified as follows:

Q. Where do you reside?
A. Oswego.
Q. About what is your age?
A. Thirty-eight years old the 23rd day of November next.
Q. What is your business?
A. Mariner.
Q. How long have you sailed?
A. About twenty-eight years; that is my business.
Q. Upon what kind of vessels?
A. Well, sir, about all kinds.
Q. Upon what waters?
A. On fresh, on salt; most of the time on fresh.
Q. How long as an officer?
A. About 11 or 12 years.
Q. Ever as master?
A. Yes, sir.
Q. How long?
A. Eight or ten years.
Q. How long as first mate?
A. I can't tell that, sir.
Q. Well, about as near as you can tell?
96 A. Probably four, five, or six years.
Q. Upon what route?
A. Between Odgensburg, Chicago, and Lake Superior.
Q. Upon what vessel were you employed in 1866?
A. Upon the propeller Cleveland.
Q. In what capacity?
A. Mate.
Q. How long were you on her in the first place?
A. I went on her on the 10th day of May, 1865, and remained on her as mate until the 17th day of December.
Q. During the whole season?
A. Yes, sir; from the 10th day of May, 1865, during the whole season of 1866, up to the time of the collision.
Q. At what time did you leave Cleveland on the trip of the collision?
A. 4 o'clock, sir.
Q. Bound for what port?
A. Detroit, Milwaukee, and Chicago.

Q. What time did your watch commence on that night?
A. At six o'clock; I came on duty at six o'clock.
Q. When did you leave the deck again?
A. Eight o'clock.
Q. When again did you come on?
A. 12 o'clock.
Q. Where was your vessel when you came on duty?
A. About 3 or 4 miles below Clay Banks.
Q. How far below the mouth of the river?
A. Well, about 10 or 15 miles, I think.
Q. Who was in your watch?
A. Mr. Charles Reynolds.
Q. What was his position?
A. Wheelsman, and Mr. Coonely, look-out.
Q. Who was engineer?
A. Mr. Burke was engineer.
Q. Who was in your watch?
A. Sometimes the 1st, sometimes the second; at this time it was Mr. Gebbo.
Q. About what time did you leave Bar Point?
A. About 2 o'clock; it might have been a little sooner or a little later, I am not positive about that.
Q. How far off the point did you take your course?
A. I took my course, sir, from the Clay Banks, west by north.
Q. How far did you run west by north?
A. We run up till we got clear of Bar Point, west by north.
97 Q. Is that the usual course, sir?
A. That is the course I have always been in the habit of steering, and the course Captain Williams always gives me to steer by.
Q. How wide a berth does that give around Bar Point?
A. I think two miles; from a mile and a half to two miles.
Q. How do you know that you run out till you made the light north by east?
A. Because, sir, I went to the pilot-house and got the light to bear north by east.
Q. How long did you run in that course, north by east?
A. Until the captain came on deck and took charge.
Q. About where were you when the captain came on deck?
A. Just inside of the land on the point.
Q. What is your guide there after taking your course?
A. Well, sir, there is a sand bluff there.
Q. By what did you head there?
A. I hauled her up for the light and steered for that.
Q. State whether you saw the compass at or about the time you hauled for the light.
A. Well, I saw by the compass, after I went into the pilot-house, that it bore north by east.
Q. State whether this is the usual practice of running up.
A. Yes, sir; that is the way I always run her when I have charge.
Q. How long did you run, before the captain came on deck, in that course?
A. Well, probably about 3 or 4 minutes. 3 minutes probably.
Q. Where were you standing when the captain came on deck?
A. Abaft of the capstan.
Q. What did the captain do when he came on deck?

A. Well, he came along and buttoned up his overcoat, stooped down, and walked along and said, "How is she going, sir?"

(Further answer objected to, which objection was overruled by the court, and witness continued.)

Just stooped down, looked around, and said, "How is she going, sir?" "North by east, sir," says I.

Q. Where did he go then?

A. He stepped forward, then stepped back to me and turned
98 around and says, "That tow has a nice light."

(Further statement of conversation objected to.)

Q. State whether you saw the lights of the tug at that time.

A. I did, sir.

Q. About how far off?

A. I should think about two miles.

Q. What lights did you see, and how did they bear?

A. I saw two white lights and a red light.

Q. How did they bear?

A. A very little on our starboard bow, sir.

Q. State whether you saw any other lights.

A. I saw, I think, it was two lights on our starboard bow, probably a point inside the tug, coming down.

Q. Did you see, then, the light of the barque?

A. I did, sir; I saw the light of the barque when I saw the light of the tug.

Q. Which of her lights did you see?

A. I saw the red light of the barque.

Q. At the same time you saw the red light of the tug?

A. I did, sir.

Q. What was your course then?

A. We were steering north by east.

Q. Heading still for the lights?

A. Yes, sir.

Q. After the captain came on deck what was the first order that was given, if any?

WITNESS. To me, sir?

A. Yes, or the wheelsman. "Answer."

Q. When was that given?

A. After the tug blew the whistle.

Q. Where was you standing at that time?

A. Just abaft the captain, sir; just near the caspstan.

What other order was given?

A. Port.

Q. To whom was that given?

A. To the man at the wheel.

Q. Was that answered?

A. I couldn't say whether it was answered or not; I passed on to the whistle.

Q. How soon after the order was given to answer did you answer?

A. As soon as I could get hold of the whistle-string; that is, I stepped aft from where I stood to the cabin, then up to the whistle-string, and took hold of the whistle-string; probably it was half a minute or so, sir; I couldn't state exactly.

Q. State whether you heard any other whistle.

A. I did, sir.

Q. After yours was sounded?

A. Yes, sir.

Q. About how far was the tug off at that time, in your judgment?

99 A. I should think it was from a half to three-quarters of a mile.

Q. How did it then bear, sir?

A. A very little to our starboard bow.

Q. State whether when this order was given to "port," whether the vessel was "ported" or not.

(Objected to and question waived.)

Q. What was the effect upon your vessel of that order to "port?"

A. She swung to starboard, sir.

Q. How much?

A. Should think about half a point or $\frac{3}{4}$.

Q. How soon was another given, sir? What was the next order given?

A. Steady.

Q. About how far had she run, sir, before the order was given to steady?

A. Well, I couldn't state how far she had run; probably a minute or a minute and a half; no, about a half a minute before the order to steady was given; probably about a minute before the order was given to "steady," she commenced to swing.

Q. Where was the tug at the time the order was given to steady?

A. About 100 or 200 feet ahead of us, sir; I should think about 150 or 200 feet westward on our port bow.

Q. Where was the barque at this time?

A. She was a very little on the port quarter of the tug, very nigh in range with the tug; that is, from where I stood, she looked to be in that direction at this time.

Q. Up to this time, sir, state whether you had seen the green light of the tug or not.

A. No, sir.

Q. Up to this time had you seen any other light of the bark than the red light you spoke of?

A. No, sir.

Q. What was the next order on your propeller?

A. Port.

Q. Where were you then in relation to the tug; that is, where was the tug at that time?

A. She was about abreast of us, sir; our bow was about abreast of her stern.

Q. What was the next order that was given?

A. "Hard aport."

Q. How soon after the order to "port" was given was the order hard aport given?

A. "Port, hard aport" was the order.

Q. Where was the barque at this time, when the order was given to "hard aport?"

A. She was sheering to the port of the tug.

Q. What lights did she show then?

A. Green light.

100 Q. What effect did the order "hard aport" have upon the propeller?

A. To sheer to the starboard.

Q. State what other order, also, if any, was given at that time.

A. No order.

Q. State whether the Martin came on and hit you; and, if so, on which side and how?

A. She came on, sir, and hit us on the port side.

Q. Which way was she heading, down the channel or towards the Canada shore?

A. Toward the Canada shore.

Q. At the time she hit you?

A. Yes, sir.

Q. About what was her length of line?

A. I couldn't say, sir; I should think about 300 or 350 feet.

Q. That is, relatively, was it a long one or a short one?

A. Ordinarily a long one.

Q. What was the effect upon the propeller of the blow of the schooner or barque?

A. Well, I couldn't give you all of the effects; I could only give you a portion of the effects, sir. The jib-boom struck just between forward our port rigging and carried away the top of the pilot-house, and went underneath the platform and struck the foremast.

Q. What was the effect upon you, captain?

A. Well, it went thro' the platform, and I presume it carried that off. As the jib-boom raised up under the platform, it capsized and carried the whole concern right along and threw me overboard.

Q. On which side of your propeller?

A. The starboard side, sir.

Q. State whether you were engaged in raising the propeller.

A. I was, sir.

Q. Have you any means of determining what her position was as she lay sunken?

A. Yes, sir.

Q. How far was it from below Bois Blanc where she sunk?

A. Well, sir, from abreast of where she lay, it was about 8,500 feet up to about abreast of the light on the end of the island.

Q. State whether you measured it, sir.

A. I did, sir; I measured it right along the shore.

Q. Have you any means of knowing where you were when the whistle sounded?

A. I have, sir; I was right by what we call the "Sugar Loaf," at Bar Point.

101 Q. If below, how far below where she lay sunken?

A. About half a mile, sir.

Q. Have you the precise distance?

A. Two thousand six hundred and forty feet, sir; understand me, that is from abreast of where the vessel lay sunken to where the whistle sounded.

Q. How long were they together before she sunk?

A. I could not tell you that, sir.

Q. About how long?

A. I couldn't give you a good statement; I was not in any predicament to tell how long she was there.

Q. Can you tell whether they drifted while they were locked together?

A. I presume they did, as there is a current there.

Q. About how much?

A. I should say about a mile and a half or two miles; I couldn't say definitely, because I am not certain.

Q. Where were you from the time of entering the pilot-house up to the time of the collision?

A. On the platform right by the pilot-house; bells lead right through the pilot-house.

Q. Where was the captain?
A. He was standing forward, sir.
Q. Where was the look-out standing?
A. Standing forward.
Q. About where forward was the look-out standing?
A. He was standing forward of the captain. The captain stood just forward of the capstan between the pall-post and the snubbing-post or tow-post.
Q. Is that the proper position for the look-out, sir?
A. Yes, sir.
Q. At the time you passed the tug, how were you heading, in or out?
A. Heading in for the Canada shore, sir.
Q. About how near to the tug did you pass?
A. About a hundred and fifty feet, I should think; I wouldn't swear positively that it was, but I should think it was about 150 feet.
Q. As you came up to the tug, did you come abreast of her or did she swing?
A. No; the tug came right on us; I didn't notice that she swung any.
Q. When she was abreast of you, did she swing?
A. When she was abreast of us she didn't alter her course, so far as I could see.
102 Q. What was her speed from the time she came inside the river, up to the time the captain came on deck, and up to the time of the collision?
A. I don't know; I should think about six miles or 6½.
Q. State whether you run as fast in the river as you do in the lake.
A. O, no, sir.
Q. Would you be likely to run as fast in taking your course?
A. No, sir.

Cross-examination.

Then you think you didn't run as fast there as when you were in the lake?
A. No, sir.
Q. For the reason that you had the current against you?
A. Yes, sir.
Q. And you were going at full speed, except so far as the current was concerned?
A. Yes, sir; we were going along ordinary speed.
Q. Except so far as the current checked you?
A. I am speaking now as far as my knowledge is concerned; the engineer has better judgment on that, whether he was carrying the same amount of steam or not.
Q. Where do you say you were when you first made the tug's light?
A. Just hauled up on our course for the river.
Q. Then as soon as you hauled up on your course and got headed north by east, you made the tug's light?
A. Yes, sir.
Q. And the barque's light?
A. Yes, sir.
Q. And the two red lights?
A. Yes, sir.
Q. And the Bois Blanc light was right ahead of you?
A. Yes, sir.
Q. At that time how did the tug's light and the barque's light bear from you?

A. A little to our starboard, probably about half a point.
Q. And apparently how far off?
A. About two miles.
Q. At that time?
A. Yes, sir.
Q. Do you remember about seeing any other lights of any other tug at that time?
A. Not any other tugs that I took to be tugs. I saw a light that I took to be on vessels or on tows going up the river.
Q. About where were they?
A. Well, sir; they were standing on the larboard hand of the tug coming down.

103 Q. How did these lights bear from you?
A. I should think about a point, sir, on our starboard hand; that is, when we had hauled up.
Q. Were they further off or nearer to you than the light which afterwards turned out to be the McClellan?
A. Nearer than the other vessels.
Q. Now you run on this north by east course before you heard the whistle about how far?
A. Well, I should say about a mile or more, or a mile and a half.
Q. And then you closed in on the tug's light a little on your starboard bow when you heard the whistle?
A. Yes, sir.
Q. How did the light of the tug bear from you when you heard the whistle?
A. It bore a little less on our starboard bow.
Q. Had it altered any?
A. Not materially at all.
Q. Well, if anything, it was a little less on your starboard bow?
A. Yes, sir; I should think it was a very little.
Q. Where did you say you were standing at this time when you heard the whistle?
A. Just abaft of the capstan, on the promenade-deck.
Q. And then the tug appeared to be about how far up?
A. Well, I should think at the time I heard the whistle it was about ½ or ¾ of a mile.
Q. Then, as I understand you, as soon as you heard this whistle the captain said, "Answer!"
A. Yes, sir.
Q. Did he say anything to you at that time about two whistles?
A. No, sir.
Q. As soon as he said "answer," what did you do next?
A. Started right off to do so, sir.
Q. Started? Where did you have to go?
A. On the hurricane-deck, sir.
Q. You had to go up a flight of stairs?
A. No, sir; two steps on to the rigging.
Q. Then where?
A. To the hurricane-deck.
Q. How far before you got to the top of the platform?
A. About 3 feet from the edge of the cabin to the stairs which step on to the platform.

104 Q. What was the distance you had to go before you could answer the whistle? As I understand you, you stepped two steps and then got on to the rigging?

A. Yes, sir; I went about six or seven feet from where I stood to the rigging; then I stepped on the rail one step and two steps on the rigging, and then to the hurricane-roof.

Q. That's the distance you had to go before you answered this whistle?

A. That's the distance I went when I answered this whistle.

Q. When was it you heard the tug sound the second whistle?

A. Just after I had sounded ours.

Q. How near were you then, in your judgment, to the tug, when you sounded your whistle?

A. I should think about half a mile, it might have been a little more; I should think about half a mile, to the best of my judgment.

Q. The light of the tug was then bearing how?

A. It was bearing dead ahead.

Q. When did you hear the captain give the order of "port," or where were you when you heard the order?

A. I was on top of the pilot-house, sir, when the second port was ordered.

Q. I am asking of the first port.

A. I was down on the deck, sir.

Q. Did he give you your order to answer and then order to port, or both together?

A. He gave me my orders, then gave the wheelsman the order to port.

Q. Just as you sounded the whistle the tug was dead ahead?

A. Yes, sir.

Q. As I understand you, just then you heard a second whistle?

A. Yes, sir.

Q. Immediately afterwards?

A. Yes, sir; immediately afterwards.

Q. Did your vessel begin to swing at once?

A. Yes; well, not until there was a pressure of the rudder.

Q. Does she steer pretty easy?

A. Tolerably as easy as that class of boats; nothing very extra; about as ordinary vessels do.

Q. Now after the first order to port, how long did you run before you got another order?

105 A. I should think about half a minute, or maybe a little more.

Q. Then what was the order?

Ans. "Steady."

Q. Given by the captain?

A. Yes.

Q. From the time you got the order to port down to the time you got the order to steady, how far do you think you had swung in points?

A. We had swung about a point, I should think, sir, from our ordinary course.

Q. And then you got the order to steady?

A. I didn't get any order to steady.

Q. Well, when the order was given, what was the bearing of the tug's light then?

A. About a point on our port bow.

Q. And about how far off?

A. Well, I should think about 100 feet or 125 feet.

Q. Ahead, do you mean?

A. Ahead, yes, sir; I should think about 100 or 150 feet ahead.

Q. That was when you got the order to steady?

A. Yes, sir.

Q. And you were still seeing the red lights?
A. Yes, sir.
Q. Now from that time until another order was given about how long? From the time of the order "steady" until the captain gave another order, how long do you think it was?
A. Well, I should think probably half a minute, I don't know; it might have been a little over half a minute.
Q. What was your next order after steady?
A. Hard aport.
Q. And then the tug's light bore from you how?
A. About abreast of us.
Q. And you still saw her red lights?
A. Yes, sir.
Q. And the Martin's red light?
A. Yes, sir.
Q. When you got the order "port?"
A. Yes, sir; when he first said "port, hard aport," I saw the Martin's green light; I didn't see it until we were just shutting the red light in and the tug was just lapping on to us.
Q. How do you mean, the bows just lapping on?
A. Yes, sir.
Q. You got the order "port," how far off were you from the tug then when she was just lapping your bows?
A. I should think about 100 or 150 feet.
Q. The order "port" was then given, and then what order?
106 A. Hard aport.
Q. At once?
A. One after the other; he said, "Port, hard aport."
Q. Without any interval?
A. Yes, there was an interval; he said, "Port," and then, "Hard aport."
Q. That was just as you were loosing the Martin's red light?
A. Yes, sir; just as we were shutting her red light in.
Q. When he said "port," your boat began to swing fast to the starboard?
A. Yes, sir.
Q. Swung fast to the starboard, didn't she?
A. Well, it depends upon how soon she obeyed the helm.
Q. If the order was given to "port, hard aport" together, she would swing fast?
A. She would after the rudder took effect.
Q. If there was an order to the man at the wheel to port, hard aport, and the wheelsman obeyed the order properly, the propeller would swing fast, wouldn't she?
A. If she obeys the helm, yes.
Q. Wouldn't she, under these circumstances, feel the effect at once?
A. No, sir, not at once; she must get the pressure of the helm first before she swings.
Q. You were headed toward the Canada shore at that time?
A. Yes, sir.
Q. And were going up stream?
A. Yes, sir.
Q. Your stern lower in the water than your bows?
A. Yes, sir.
Q. These were very favorable circumstances to enable her to swing to the starboard, were they not?

A. I don't know why, sir.
Q. You don't know why these were favorable circumstances?
A. No, sir.
Q. You can swing faster going up stream than going down?
A. Not a great deal, sir.
Q. It would some?
A. I don't think that she would swing any faster.
Q. She would swing faster headed toward the Canada shore, then, than if she was going straight up stream?
107 A. Well, provided her helm was aport, she would.
Q. She would swing faster if her stern was deeper in the water than her bows, than if she was on an even keel, would she not?
A. I don't think she would swing very much faster.
Q. Don't you think it would make some difference?
A. It might make a fraction; I don't think it would make much difference.
Q. Now, I understand you to say you saw the red light before the green light?
A. Yes, sir.
Q. How far away when you saw the green light was the Martin?
A. I should think she was probably about from 50 to 75 feet ahead.
Q. Bearing about how off her bows to port?
A. Probably about two points and a half.
Q. Now, after this order to "port, hard aport," how far do you think you swung before the collision?
A. About two points; it may be a little more; it may be two points and a half.
Q. Did you look at the compass to see?
A. I did not, sir.
Q. You could have seen?
A. No, sir.
Q. You could not see it from the platform?
A. No, sir.
Q. Now the look-out had been standing there forward all this time?
A. Yes, sir.
Q. Did you see him have any conversation with the captain?
A. Well, not at that time; no, sir; possibly he might; I didn't watch.
Q. From the time you made the light down to the time of the collision, you don't remember hearing the look-out say anything?
A. Yes, sir; I heard him say, "That is a splendid light."
Q. That was all you heard him say?
A. Yes, sir; that was all.
Q. He spoke of some of his own good lights?
A. No, sir; speaking of the barque's lights.
Q. That was all you heard?
A. That was all I heard.
Q. Did the look-out make no report of these lights; such a report as a look-out makes?
A. Well, no more than what I have stated, about those being splendid lights.
108 Q. You heard him then make no report of the light?
A. No, sir; I heard him make nothing of the kind.
Q. Now, whereabouts did you say you were in the river when you heard this whistle?
A. We were not in the river; we didn't collide in the river; we collided down below the river.

Q. Where do you call the mouth of the river? At the entrance between Bois Blanc Island and the main-land?

A. Yes, sir.

Q. That is what they call the entrance of the river?

A. Yes, sir.

Q. Whereabouts do you say that you were then; what was your land-mark? I am asking you where you were at the time you heard the tug's whistle?

A. Right off the Sugar Loaf.

Q. When your heard the whistle?

A. Yes, sir.

Q. You remember noticing it at the time?

A. I do, sir.

Q. Did you and the captain talk about it?

A. No, sir.

Q. There was nothing said about it between you and the captain?

A. No, sir.

Q. You noticed that then, and immediately started to go to your platform?

A. Yes, sir; we were not quite to the Sugar Loaf when I started to the platform.

Q. How far were you below?

A. I couldn't tell exactly how far; not but a short distance; probably 200 feet, as nigh as I could get.

Q. When was it you made these measurements, Capt. Davis?

A. I think it was on the 7th or 8th of March, I think it was; I wouldn't be positive.

Q. Of this March?

A. Yes, sir.

Q. The propeller had been raised and taken away then?

A. Yes, sir.

Q. Before you made these measurements?

A. Yes, sir.

Q. How did you ascertain the exact place where she was sunk?

A. Because I resided right there, and took the bearings half a dozens different times before she was raised. I knew where she lay.

Q. She was sunk 2,640 above the place where you heard the whistle, was she?

A. Yes, sir.

109. Q. From the Sugar Loaf, the place where you heard the whistle, to where she lay, it was 2,640 feet, you say?

A. Yes, sir; that was from where the vessel lay, to the Sugar Loaf, 2,640 feet, from abreast of where she lay to the Sugar Loaf.

Q. You said something about your having been master. What was you master of?

A. Of vessels.

Q. Sailing vessels?

A. Yes, sir.

Q. On the lakes?

A. Yes, sir.

Q. For how long a time?

A. I don't remember exactly how long; I can't give you the exact time; about 7 or 8 years.

Q. What time in the day was it when you left Cleveland?

A. Four o'clock in the afternoon.

Q. Where were you at 4 o'clock?

A. Just getting outside the piers.
Q. Did you have to wind off to get out?
A. No, sir; we went right straight along.
Q. How far is it from Cleveland to the place where this collision happened, sir?
A. 90 miles to the mouth of the river.
Q. Ninety miles to the mouth of the river at Bois Blanc Island?
A. I never measured it; I take it by miles on the chart.

Re-direct examination.

What kind of a night was it, captain?
A. Clear and starlight night.
Q. Did you sign the protest of the propeller?
A. I did, sir.
Q. Was that done in Detroit?
A. It was, sir.
Q. Who were present?
A. Mr. Gibbo, Capt. Williams, Charles Reynolds, and the gentleman who made out the protest, and our agent.
Q. Was there a lawyer present?
A. Not that I know of.
Q. Didn't you make the protest before a lawyer?
A. I couldn't tell whether it was a lawyer or not.

110 *Deposition of Geo. H. Coonely.*

And the counsel for the said plaintiff produced—
Geo. H. Coonely, who, being duly sworn, testified as follows:

Q. Where do you reside?
A. I reside in Chicago, sir.
Q. In what employment were you in June, 1866?
A. I was look-out's man on the Cleveland.
Q. On the night of the collision?
A. Yes, sir.
Q. How long had you been on her?
A. Since the 3rd day of April.
Q. To that night?
A. Yes, sir.
Q. What was your business before?
A. Before I went on her I was railroading.
Q. You hadn't been a sailor long?
A. No, sir.
Q. What time did you go on the look-out that night?
A. Twelve o'clock.
Q. Where were you stationed?
A. Right forward of the capstan.
Q. In whose watch were you?
A. In the mate's watch.
Q. Do you recollect when you got into the river that night?
A. Yes, sir.
Q. That is when you come to Bar Point?
A. Yes, sir.
Q. After you arrived at Bar Point, before the collision, state whether the captain came on deck.
A. He did.

Q. State whether you saw the lights of the tug and the barque before the collision.
A. I did.

Cross-examination.

When did you go on the propeller?
A. On the 3d day of April.
Q. You were railroading before that?
A. Yes, sir.
Q. Never sailed before that?
A. Yes, sir
Q. When?
A. I sailed some five or six years in the summer seasons.
Q. When was that?
A. Well, it was before last summer, certainly.
Q. Well, how long before last summer certainly?
A. Probably in '60.
Q. What is your present age?
A. Twenty-two.
Q. What capacity were you sailing in, in '60?
111 A. I was then porter.
Q. What had you been doing long before '60?
A. I don't know as I can tell you what I was doing before I went to sailing.
Q. When did you first go sailing?
A. I think it was somewhere in '60.
Q. How long were you sailing in '60?
A. I couldn't tell you precisely.
Q. Suppose you tell as near as you can.
A. Well, some time in '60.
Q. You were porter then?
A. Yes, sir.
Q. How long had you sailed in '61?
A. I hadn't sailed the season out.
Q. You was a porter?
A. Yes, sir; I was porter all the time till last season.
Q. You can't state how long you were a sailor before either of these seasons, '61 and '62?
A. No, sir; not exactly.

Deposition of Jonas H. Gibbo.

And the counsel for the said plaintiffs produced—
Jonas H. Gibbo, who, being duly sworn, testified as follows:
Q. What is your business, Mr. Gibbo?
A. Engineer.
Q. How long have you been an engineer?
A. One season on the propeller.
Q. What time did you go on her?
A. I went on her in 1865.
Q. As engineer?
A. Fireman.
Q. What engineer, first or second?
A. Second.
Q. Were you on the propeller Cleveland at the time of the collision?

A. Yes, sir; I was.
Q. Was it your watch?
A. Yes, sir.
Q. What time did your watch commence that night?
A. One o'clock.
Q. State what whistles you heard on your propeller, if any.
A. I heard one whistle, sir.
Q. Do you know, sir, when you came into the river around Bar Point?
A. No, sir; I didn't notice.
Q. About how long before this collision did you hear that whistle?
A. I think it was about 3 or 4 minutes after I heard the whis-
112 tle sounded before the collision, as near as I can judge. I didn't look at the clock.
Q. What were you doing, and where were you at the time the whistle sounded before the collision?
A. I was in the engine-room.
Q. Can you state, sir, about what was the speed of your propeller?
A. I think it was about 6 or 6½ miles, as near as I can judge.

Cross-examination.

Q. How long did you say you had been engineer at the time of the collision?
A. I had been engineer since the 14th day of April.
Q. You never had been engineer before that time—not on the propeller?
A. No, sir.
Q. Ever been engineer on the lakes before?
A. No, sir; I had run stationary engines.
Q. What did you run on land?
A. Stationary engines for grist-mills, and I had run a small propeller, or pleasure-boat, on the river.
Q. How long did you run a stationary engine?
A. 3 winters and one summer.
Q. Where was that?
A. Cape Vincent.
Q. Did you run that as engineer?
A. Yes, sir.
Q. Was there any other engineer beside yourself?
A. No, sir.
Q. Before you run the engine on board this propeller you had been fireman?
A. Yes, sir.
Q. Only one season?
A. Yes, sir.
Q. That is all the experience you had had on water?
A. No, sir; I had sailed three seasons before this.
Q. In what capacity?
A. Seaman.
Q. You say your speed was 6 or 6½ miles an hour, as near as you could judge?
A. Yes, sir.
Q How long had you been on watch at this time when you heard the whistle?
A. About an hour & a quarter.
Q. The engine was making the same revolutions, I suppose, thatit had been in the lake?

113 A. Yes, sir; I didn't mind that; I suppose it was.
Q. How old are you?
A. 24 on the 16th day of last December.

Capt. Wm. H. Williams recalled:
Q. Were you ever sworn before this?
A. No, sir.
Q. Were you ever in a court during a trial?
A. No, sir.

And the counsel for the said libellants then rested their case on the evidence.

Respondents' testimony.—Deposition of James Collins.

And the counsel for the said respondents produced—
James Collins, who, being duly sworn, testified as follows:
Q. Where do you live, Mr. Collins?
A. At Cleveland.
Q. What is your business?
A. Sailing.
Q. How long have you been a sailor; how long on the western lakes?
A. Twelve years; 28 years a sailor.
Q. In what capacity on the lakes?
A. 8 years as mate; and some as second mate; and the balance before the mast.
Q. On what kind of vessels have you sailed?
A. Barques, briggs, and schooners.
Q. In June, 1866, what were you on?
A. On the Maria Martin.
Q. In what capacity?
A. Mate.
Q. When did you go on her as mate?
A. Some time in May; I don't hardly recollect what time I went on her, but it was the latter end of May, I believe.
Q. How long did you remain on her after you went on her?
A. Until about the 28th of June—I think it was—when I left her.
Q. Were you on her at the time she had the collision with the Cleveland?
A. Yes, sir.
Q. Where were you bound from, and where to?
A. From Chicago to Buffalo.
114 Q. What were you loaded with?
A. Corn.
Q. How much of a load?
A. About 35 thousand bushels, I believe, and some odd.
Q. Of what?
A. Corn.
Q. How much would the Maria Martin carry?
A. About 36,000 bushels of corn.
Q. How much water would she draw with that load?
A. About 12 feet and 3 or 4 inches.
Q. What is the tonnage of the Martin?
A. About 560 tons and some odd. I can't state exactly. I have forgot the odd.
Q. What was the length, if you recollect?

A. Her length is near about 200 feet; about 190 feet, I think, over all.
Q. Breadth, or width, about how much?
A. I should say about 38 feet.
Q. How was she rigged?
A. Square-rigged forward, and fore-and-aft, with three masts.
Q. What is the name of such a vessel?
A. A bark or barkentine they call them.
Q. How many jibs does she carry?
A. Three jibs.
Q. How old was she?
A. A new vessel.
Q. What kind of a vessel was she as to quality?
A. She was a good vessel.
Q. What men and officers did she carry?
A. 8 men, 2 mates, captain, and cook.
Q. Did she have them on this trip?
A. Yes, sir.
Q. Tell me whether this is a full crew.
A. Yes, sir.
Q. That is the crew such vessels generally carry on these lakes—vessels of that size?
A. Yes, sir; it is.
Q. What do you call her as to size, compared with others?
A. She is a large vessels compared with other vessels.
Q. Now, were you upon her when she came down to Detroit?
A. Yes, sir.
Q. Do you remember where she took the tug McClellan?
A. I can't tell exactly where she took the tug; but I think it
115 was not until she had got pretty well down to the lake.
Q. You had to take a tug to go down to Lake Huron, didn't you?
A. Yes.
Q. In whose watch did this collision happen?
A. In the captain's watch.
Q. Is that what you call a starboard watch?
A. Yes, sir.
Q. When did you go on deck, before the collision happened?
A. About a quarter of an hour before the collision happened.
Q. Were you on deck when the tug-boat McClellan took the barque in tow?
A. Yes, sir.
Q. How much line did she have out, the Martin?
A. Sixty fathoms of line were out.
Q. What kind of line was that?
A. A seven-inch Manilla line.
Q. How old was it?
A. It had been use; that was the 4th time it had been used.
Q. How is a seven-inch line as to size, large or small?
A. It is a large tow-line.
Q. Who determine the length of the line to put out when the tug takes hold?
A. The officer of the deck of the tug.
Q. On which vessel does the line belong?
A. On the vessel, not the tug; to the barque.
Q. Does the tug or the vessel pay out the line?
A. The vessel.

Q. When do they stop paying out?
A. When the officer of the deck of tug gives the order to stop.
Q. I will ask you if this was the way this was done on this occasion.
A. Yes, sir; it was.
Q. Were you present when this was done yourself?
A. Yes, sir.
Q. How was the line made fast to the tug?
A. It was fast to the samson-post on the deck.
Q. Whereabouts is that post on the deck?
A. About amidships on deck; I suppose about 25 feet forward of the taffrail.
Q. How was the line made fast on the barque?
A. It was put through the line-chock, passing over the starboard bow, and fastened to the pall-post to heads made for that business.
Q. Where was this chock on the starboard bow?
A. About between four or five feet from the bowsprit.
116 Q. It run through this chock-plate?
A. Yes, sir.
Q. How much line was there out?
A. There were sixty fathoms from our vessel.
Q. Now tell whether or not you were on deck at the time you passed the Bois Blanc light.
A. Yes, sir.
Q. How came you on deck at that time?
A. We were on deck to make sail.
Q. Who called you?
A. The captain.
Q. What were you making sail there for?
A. To have the canvass on the vessel to keep the vessel on her way when the tug let go when reaching the lake.
Q. How far below there did they cast off, as a general thing; below the light?
A. Between two miles and a half and three miles below the light; sometimes they did not tug so far if the wind was down the river.
Q. Is that place where you were a proper place to make sail?
A. Yes, sir.
Q. How was the night at that time?
A. It was a clear, starlight night.
Q. How was the wind?
A. A little sou'-west and a very light breeze.
Q. When did you commence to make sail?
A. About Bois Blanc light.
Q. What sails did commence to make?
A. Mainsail and mainstaysail.
Q. Were you on deck at the time?
A. Yes, sir.
Q. Who was on deck?
A. All hands.
Q. Who was at the wheel?
A. One of the sailors.
Q. Do you remember his name?
A. Peter Edgar.
Q. Now when you passed Bois Blanc light, tell me how you passed there with reference to the centre of the channel.
A. We were in the centre of the channel.
Q. About how wide is the channel there?

A. I don't believe it is over a quarter of a mile abreast of Bois Blanc light.

117 Q. How were you heading at the time with reference to the tug?

A. Right after the tug.

Q. Do you remember anything about anybody's coming aboard about that time?

A. Yes; the settler came aboard.

Q. Whereabouts?

A. Just as we got to the light.

Q. Who is this settler?

A. He is the man who collects the tow-bills of the vessels, and his name was Frank Hackett.

Q. What were you busy about when you came on deck first?

A. I didn't do nothing for some minutes, and then I called the men to loose the canvass.

Q. Do you remember anything of seeing a tow of several vessels together?

A. Yes, sir.

Q. How many vessels were there in that tow?

A. I could not say; there was four or five vessels.

Q. On which hand did the tow pass you?

A. On the port hand.

Q. About how far?

A. About 120 feet, I should say; it might be more or less.

Q. At that time, when the tow passed you, how were you with reference to the centre of the channel?

A. We were in the centre of the channel.

Q. How were you headed with reference to the tug?

A. Right after the tug.

Q. Do you know what course you were steering by the compass?

A. It was about S. ¾ points at that time, I think; I didn't see the compass; I didn't look at the compass, but by the looks of the vessel going along, from the light, I suppose it was going along down her course about the centre of the channel.

Q. Tell me whether or not vessels steer by the compass when they are going down the river.

A. Not on the tow.

Q. How do they steer?

A. After the tug.

Q. Tell me whether or not you noticed any other lights ahead.

A. I didn't see any more lights until we got to the tow vessels.

Q. Which tow do you mean?

A. The tow that was abreast of us; the tow was abreast of the tug when I saw these other lights ahead.

Q. Where were you standing then?

A. Standing on the cabin.

118 Q. What lights did you see first?

A. I saw a red light, a green light, and a white light.

Q. Upon what vessels did they afterwards prove to be?

A. Propeller.

Q. What propeller?

A. Propeller Cleveland.

Q. How did these red, white, and green lights bear when you first saw them all?

A. Right ahead.

Q. How were you then with reference to the tug? How was your lights?

A. Right after the tug.

Q. About how far off did these red, white, and green lights appear to be then?

A. Didn't appear to be over a quarter of a mile.

Q. What should you judge your speed was at that time?

A. I should suppose the vessel was going along about 6½, 6, or 6½ miles.

Q. Past the land?

A. Past the land, yes.

Q. How far should you judge you were below Bois Blanc light then?

A. I should judge we were about a mile and a quarter; it might be more, but I think it was about that distance.

Q. Did you tell me where you were standing at that time?

A. On the cabin.

Q. Now you say that you saw these 3 lights ahead. Tell me what was the next thing that occurred.

A. The propeller kept right on, heading for the tug, a little on the tug's starboard bow.

Q. What else did you see?

A. All her lights.

Q. Did the tug do anything?

A. No, not then.

Q. When did the tug do anything?

A. The propeller got close up to the tug, when she blew the whistle.

Q. Which blew one whistle?

A. The tug.

Q. How close did the propeller appear to be to the tug when the tug blew the first whistle?

A. She didn't appear, from where I stood, didn't appear to be very far; betwixt 30 and 40 feet off the tug's bow; she might be more, but I didn't suppose she was any more, from the appearance from where I stood.

119 Q. When the tug blew the first whistle, what did you say or do, if anything?

A. I told the men all to go forward.

Q. What did you tell them to go forward for?

A. To stand there in case that I would want to use them for anything.

Q. What is that one whistle the signal for?

A. Well, that is, take in your tow-line—when you are on the lake, when you are in tow, and a tug has hold of you, that is the signal for the vessel; and the answering of tugs, propellers, or steamers. I don't know nothing about the signal is for a vessel to haul in the tow-line. It is to ask to let go the tow-line of the vessel that hauls it in.

Q. Well, what did the men do when you told them to go forward?

A. They went forward.

Q. How far?

A. Some of them got on the forecastle; some of them hadn't got that far, when the tug blew another whistle, as I suppose it to be the tug. It was not so large a blow as the first whistle that blew, but I supposed them both to be from the tug.

Q. When the tug blew the second whistle, how did the propeller's light bear?

A. She was a little on the starboard bow, closing in her green light.

Q. A little on the starboard bow of what?

A. Of the tug.

Q. When the second whistle blew, how far did the propeller appear to be from the tug?

A. She appeared to be betwixt twenty and twenty-five feet off, on the side of the tug.

Q. When the tug blew the second whistle, what was the next thing that was done?

A. The tug run out on our starboard bow.

Q. What was done on your vessel then, if anything?

A. We were put to port.

Q. What order was given?

A. Hard aport.

Q. Who gave it?

A. The second mate.

Q. Did any other give it?

A. I gave it.

Q. Which gave it first, you or the second mate?

A. Second mate.

Q. Where was the second mate standing at that time.

120 A. He was forward at the time he sung out hard aport.

Q. Where were you standing when you sung out hard aport.

A. I was standing on the ladder going up on to the quarter-deck, off of the main-deck.

Q. You say that the wheel was put hard aport; how do you know?

A. I could see the man pulling the wheel to starboard, which throws the tiller to port.

Q. Where was the man standing? On which side of the vessel?

A. The man that was steering was on the starboard side of the wheel.

Q. To put the wheel to "port," what does the man do?

A. He rolls the wheel to starboard.

Q. Toward him?

A. Towards him, yes.

Q. Did you see the propeller pass the tug?

A. Yes, sir.

Q. After putting the helm to port?

A. Yes, sir.

Q. Which way does that make the vessel swing?

A. Swing to starboard.

Q. Now you say you saw the propeller pass the tug. About far did she appear to be off from the tug as she passed?

A. Well, I should think betwixt 15 or 20 feet. So it appeared to me when I stood on the vessel.

Q. Tell me whether or not you had any head sail on at that time.

A. None at all, sir.

Q. What was there on?

A. Mainstaysail and mainsail.

Q. What, if anything, was there forward to obscure your view?

A. Nothing, sir.

Q. As the propeller passed the tug, what else did you see on her?

A. I could see her red light and green light. She shut her green light just as she passed the bow of the tug; she was about abreast of the tug when we saw her red light and green light, or might be a little more toward the vessel.

Q. How did she come along when she passed the tug?

A. She came right straight along, showing all her lights toward the vessel, a little before our starboard bow.

Q. How much on your starboard bow?

121 A. From half a point to three-quarters; maybe a point.

Q. Then what did she do?

A. She came right along until she got close to our jib-boom.

Q. Then what?

A. Swung off to the starboard, shutting off the starboard light.

Q. Showing you what light?

A. Red light.

Q. How was your vessel going at this time; was your vessel swining to the [the] starboard?

A. Yes, sir.

Q. How could you tell?

A. I could tell by the stars ahead.

Q. Now tell me about how the vessel struck.

A. She struck her on the port bow.

Q. Who struck her?

A. The barque; her head-gear verged around the port bow by the pilot-house, and glanced along until we came about her midships, and fastened into her about her midships.

Q. Which bow struck her?

Ans. Port bow.

Q. If you had both been going the same way, how many points would there have been between your course when you struck?

A. There would have been, I suppose, about a point and a half.

Q. At what time?

A. At the time they struck. It might be more and might be a little less. I suppose a point and a half would be about how they struck.

Q. When do you mean that it was a point and a half?

A. That was when we first touched the propeller.

Q. Was that before or after the bows came together?

A. Before the bows came together.

Q. Whereabouts did your jib-boom run into her?

A. Somewhere about her pilot-house. I believe that it was forward of the foremast. The jib-boom went inside of her rigging; took it away but cleared the mast.

Q. What was the effect of the blow on your boat?

A. It broke off her chain where that was forward, and took her cut-water off; broke her jib-boom.

Q. Which way did the effect of the blow swing her?

A. Swung her to port.

Q. What was the effect of the blow on your tow-line?

A. Broke the tow-line.

122 Q. Whereabouts did it break it?

A. Outside of the chock.

Q. Where were you standing when it broke?

A. Forward.

Q. Did you see it break?

A. Yes, sir.

Q. What speed did the propeller seem to be coming on at that time?

A. She appeared to be coming at full speed.

Q. Did you hear any bells rung on her?

A. No, sir.

Q. Where was the captain at the time of the collision—your captain?

A. He was in the cabin settling with the settler.

Q. I mean just at the time you struck?

A. I turned around; I was going out to the forecastle as they struck. I see the captain by the forecastle at that time.

Q. You said something about his having gone below; what had he gone below deck for?

A. To settle with the man that collects the tow-bills.

Q. Tell me from the time that the tug first commenced to sheer off, down to the time of the collision, how far do you think the tug had got off your starboard bow.

A. About two points probably. It might be two and a half; betwixt two and a half to two points.

Q. Two and half to two points in all?

Ans. Yes, sir.

Cross-examination.

What time did you leave the watch that night on deck?

A. About quarter past one, I think, when I came on deck.

Q. When you came on deck?

A. Yes, sir.

Q. What time did you turn in, sir?

A. Turned in at 12 o'clock.

Q. You kept your watch up to twelve o'clock?

A. Yes, sir.

Q. Who was in your watch?

A. There was 4 men.

Q. Who were they?

A. Well, I can't tell the names—4 sailors.

Q. Can you tell the names of any of them?

A. Yes, I think I can. I could soon find their names out for you.

Q. I won't ask you to go now; can you give the names?

A. There was Brown, was one; Wallace was another; and
123 Standolf—that 3 of them. I don't know the others one's name.

Q. What did Brown do?

A. Helping hoist the sail.

Q. What did Wallace do?

A. Helping on the sail.

Q. What did Standolf do?

A. Helping to make sail.

Q. They were under your charge?

A. In my charge.

Q. Meaning your watch, who was in your watch?

A. Well, they were the three men that were in my watch.

Q. Who else was in your watch?

A. I can't remember the other man's name.

Q. Can you remember what they did?

A. When they were coming into tow, before they commenced to make sail, they were doing nothing.

Q. When did your watch end?

A. 12 o'clock.

Q. Merely in your watch I am talking about; what did these others do in your watch?

A. Nothing; only one man steering the vessel.

Q. What time did your watch commence that night?

A. My watch commenced at 4 o'clock.

Q. From 4 to 12, then, you were the watch?

A. Yes, sir.
Q. From then to 4 would be on the captain's watch?
A. Yes, sir.
Q. Your watch commenced, then, at eight o'clock, did it?
A. Yes, sir.
Q. And you have until 12?
A. Yes, sir.
Q. When did you turn in, sir?
A. At 12 o'clock.
Q. Did you go to sleep?
A. Yes, sir.
Q. How long were you asleep?
A. About an hour and a quarter.
Q. How did you happen to get up? Who called you?
A. The captain called me.
Q. Where was the captain when you came on deck?
A. He was standing forward of the cabin.
Q. Whereabouts were you when you came on deck; where was your vessel?
A. A little below Malden and Bois Blanc light.
Q. When did the settler come on board?
A. Just about the time I came on deck.
Q. Where did he go when he came on board?
A. He was talking to the captain just where I stood.
124 Q. Where did he go?
A. He went aft.
Q. Where did he go then?
A. Stood on deck, talking, for some time.
Q. Where did he go then?
A. Went in the cabin.
Q. Who went into the cabin?
A. The settler and the captain.
Q. About what time did he go into the cabin?
A. About half past one.
Q. Where was your vessel at that time?
A. She was down about a mile and a quarter, nearabouts; well, it was about a mile below the light.
Q. What did you do from the time you came on deck to the time the captain came out of the cabin?
A. Commencing loosening the sails.
Q. Where were you loosing the sails?
A. Mainsail aft.
Q. Who, if any one, were helping you?
A. The hands. I was not loosing it; the men were loosening it. I was looking out.
Q. Looking out for what?
A. The vessel.
Q. You was the look-out?
A. No, sir. I was looking out tho' for the vessel.
Q. What for?
A. Well, to see how the barque was running, & looking after the crew & the man at the wheel.
Q. How far aft were you at that time?
A. I was on the cabin.
Q. Where is your cabin?
A. Abaft the mainmast.

Q. How far from the stern?

A. I suppose it would be about 10 feet from the stern. It might be more; I can't tell rightly.

Q. Which way does your cabin open out, sir?

A. It opens out aft and forward.

Q. Fore and aft?

A. Both.

Q. How long is your cabin?

A. It might be about 30 feet; 30 or 35 feet.

Q. Where were you standing when you was giving these orders?

A. On the top of the cabin, forward part of it.

Q. How long did you say it was?

A. It might be 25 or it might be 30 feet.

Q. Is it over 20?

A. O, yes.

Q. Is it over 30?

A. No; I don't know as it is.

125 Q. The captain was below, and the man at the wheel; all the rest of you were at work at the sails?

A. Yes, sir; all but the man at the wheel.

Q. What was the name of the man at the wheel?

A. His name was Peter.

Q. Where is your wheel?

A. Aft the cabin.

Q. Where is it where the man stands who handles the wheel?

A. He stands on one side of the wheel abaft the wheel.

Q. Is the cabin higher than the wheel?

A. Yes, a little higher, so that the man standing at the wheel can see over it.

Q. How much over it?

A. Probably 3 feet; about 3 feet or 3½ feet from where the man stands to the top of the cabin.

Q. How much sheer has your vessel?

A. Probably it might be two feet, or two feet and a half.

Q. Above the deck?

A. Yes; from both ends amidships; two and a half, I think; it may be more or less.

Q. How high is the rail above your deck?

A. Probably about 4 feet.

Q. How wide is your jib-boom or bowsprit at the stem?

A. It is probably about 20 inches.

Q. Does that include the bees on either side?

A. No.

Q. How wide are these?

A. About 4 or 5 inches.

Q. Each?

A. Yes.

Q. How wide is the stem and the bees?

A. The stem and the bees together might be 24 or 25 inches.

Q. Ain't it 30 inches?

A. I don't think it is.

Q. How much rise is to the bowsprit?

A. It might be 18 inches or a foot.

Q. How do I understand you; from the stem of the bowsprit?

A. I should say it was about that.

Q. From the outer end of the bowsprit you say is about 18 inches or a foot above the bees?
A. Yes; I think it is about that; it might not be so much.
Q. How long is your bowsprit?
A. I suppose about 10 or 12 feet.
Q. How long is your jib-boom?
A. I suppose may be about 29 or 30 feet.
126 Q. How high is the deck of your cabin above the main-deck?
A. I think about six feet.
Q. Is your cabin above or below?
A. It is on deck. It might be more than this; I believe it is somewhat over six feet.
Q. Now, witness, where were you standing at the time you went to work at these sails?
A. At the top of the cabin. When I first gave the order I was on the main-deck.
Q. How long were you on the main-deck?
A. Two or three minutes.
Q. After the captain went below, how long were you on the main-deck?
A. I was not on the main-deck, I suppose, over a minute or two.
Q. When the captain went into the cabin with this settler, had you seen the lights of the propeller?
A. I know I had seen the tow.
Q. Where was the tow when you saw the lights of the propeller?
A. The tow was passing the tug.
Q. What part of the tow?
A. The stern vessel.
Q. How many vessels were there?
A. Either four or five.
Q. How long is that tow?
A. I couldn't tell you exactly; might be quarter of a mile long.
Q. Wouldn't it be over that?
A. I don't know but it might be over that.
Q. And the stern vessel of the tow was abreast of the tug when the captain went below?
A. I couldn't tell you rightly when he did go below.
Q. You said you was a minute or a minute and a half before you went on from the main-deck to the deck of the cabin?
A. Yes, sir.
Q. When was it you saw these lights of the propeller?
A. I was on the deck of the cabin at the time.
Q. How long was it after the captain went below that you saw the lights?
A. It might have been a minute or two.
Q. Where was this tow when the captain went below?
A. I couldn't tell you, sir.
127 Q. Now how far were these lights when you first saw them?
WITNESS. The tow's light?—A. No; the lights of the propeller.
A. About a quarter of a mile.
Q. All three of them?
A. Yes.
Q. Did you see any compass at this time?
A. No, sir.
Q. How long after you saw these lights before these lights came up to the tug?
A. I couldn't tell that.

Q. Well, about how long?
A. I couldn't form any opinion how long it was. It was not 10 minutes, I don't believe.
Q. Well, was there five minutes?
A. Yes, I guess there was.
Q. Wasn't she seven minutes?
A. I don't know, but she might be between that and ten, because a vessel going as we were wouldn't be long coming together at that distance.
Q. How did these lights continue to bear?
A. Ahead of the tug.
Q. Right ahead?
A. Yes, sir.
Q. Didn't change them at all?
A. Not for some time, as she drew from the propeller towards the tug.
Q. As she drew towards the tug, then what change was there?
A. She closed in her red light.
Q. How long did she run, after she had closed in her red light, before she came up to you?
A. Not over a few seconds.
Q. About how few seconds?
A. About 20 or 30; maybe more.
Q. Did she shut in her red light?
A. Yes, sir; her green light I should have said.
Q. She shut in her green light?
A. Yes, sir.
Q. Where was the tug at this time?
A. The tug was going along the same way.
Q. A little over your starboard bow?
A. No; right ahead of our vessel.
Q. You were following directly after the tug, were you?
A. Yes, sir.
Q. You were making sail during this time?
A. Yes, sir.
Q. Attending to the men yourself?
A. All, except the man at the wheel, was there.

Q. What sails had you up when she shut in her green light?

128 A. The mainstay-sail was up, and the mainsail very near up; it was not quite hoisted. The men were all at work, hoisting; there was one man at work loosening the jibs. There was not wind enough to fill the sails, or to affect them at all. When the second whistle blew I was standing looking at the propeller on top of the cabin; don't know what I came down from the cabin for; didn't come down for anything in particular. When the second whistle blew, I stood on the step of the ladder leading to the quarter-deck. I was not paying attention to raising the sail; I was looking at the propeller. At the time the whistle blew, they had got the mainsail pretty well set. I had charge of it. I don't know where the second mate was. Some time before that he was pulling on the mainsail. I can't say exactly how long the propeller run toward us after the whistle blew; I could not say, but perhaps between 10 minutes, or thereabouts. I should say there was between 15 or 20 seconds between the time of blowing the two whistles. When the second whistle blew I was standing on the ladder alongside of the rail. The men were not putting up the mainsail then; they were forward; they went forward when the tug blew the first whistle. I wanted them forward in case I might want to use them; I can't tell

what for, unless to haul in the tow-line. I understood the whistle was for casting off the line. There was no order given from the time I took charge until the tug blew her whistle, except to make sail, and that I gave. An order was given to the man at the wheel to keep after the tug; the captain gave that order before he left the deck. I couldn't tell whether he gave the order once or twice; I didn't hear it more than once. It was some time before he went below; I couldn't tell exactly how long. The tug was not sheering off any when the order was given: the wind would not sheer us; it would to starboard, if any; the tow-line being on the starboard bow would make no difference. He gave the order to see if the man would attend to his business, I suppose. She had not sheered any before while I was on deck, nor during my watch. I didn't hear the captain of the tug say anything, or ask why I didn't steer better for the tug.

129 Quest. If you understood the whistle to blow to mean cast off the line, which way would you put your wheel?

Ans. To starboard. That would be natural; that would sheer us to port. I would give my vessel a starboard helm. I didn't sail on the vessel any more after the collision. I got suited better. I was not discharged. When the second mate gave the order, I suppose he was on the forecastle, but don't know. I was aft at the time. The propeller was 20 or 25 feet from the tug when she blew her second whistle. The tug was then right ahead of our vessel; we were following directly in line. I saw the red light on the propeller when she was ahead of the tug; she was at that time maybe 30 feet off; she was about that far when she shut in her green light. I had seen her coming up with all her lights to that point for 7 or 10 minutes previously. She first closed in her red light, & afterwards her green light. She didn't run but a very few seconds with her red light closed in, may 15 or 20 seconds. Then she ran a very few seconds, not over 10 seconds, showing red light; then she ran 15 or 20 seconds after shutting in her red light, showing her green light, and then a very few seconds, not over 10 seconds, when red light shone, I don't suppose. She was then going on the port bow of the tug maybe half a point; she was not any on our port bow at all; she would be as much on our port bow as on that of the tug, if she had kept right after the tug. After she had run this ten seconds, she came up within about 15 or 20 feet of the tug, when she shut in the red light; the tug's whistle was blown; then she shut out the green light, and showed the red light, and the tug's whistle was blown. She was more than 10 feet, may 20 or 30, when the first whistle was blown. I heard no other whistle. These whistles were not alike; the second whistle didn't sound exactly like the first, not quite so large as the first; it had the same tone, only not so long. When the first whistle was blown I was on the cabin. When I stepped down from the cabin I did nothing, but told the men to go forward. I then went to the rail, and put my foot on the step of the ladder going up to the quarter-deck. Some
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from the stern of the tug, but I think about 300 feet at that time. I I don't suppose we were over 250 feet, may 300 feet, from the pr She was passing the tug at that time. When she blew the tle the tug had cleared her, and left the propeller going al the captain went below, I had command of the tug, and gave During my watch I looked out myself; had no other one during my watch. While I had charge of the deck during th watch I looked out. I didn't sign the protest made in Buffa ing the collision; wasn't asked to. I think I left the vessel o of June. I left her because I could do better in other places. sel had not discharged her cargo when I left her. I am not no body's employ. During the latter part of the season I was in M Hyde's] *S. S. Lyon's* employ. I am not engaged for this season. been employed during the winter by a man named Fields, work foundry at Cleveland.

Deposition of Robert Osborn.

And counsel for said respondents produced—
Robert Osborn, who, being duly sworn, testified as follows:

Q. Where do you reside?
A. Chicago, sir.
Q. What is your business?
A. Sailing.
Q. What countryman are you?
A. Norwegian.
Q. How long have you been a sailor?
A. About 16 years.
Q. How long on the western lakes?
A. Three years, sir.
131 Q. In what capacities have you sailed?
A. As second mate two years.
Q. In what other ways have you sailed besides 2d mate?
A. Before the mast.
Q. How old are you, Osborn?
A. I was born in 1834, on the 17th of April.
Q. Were you on board the Maria Martin when she had this collision?
A. Yes, sir.
Q. In what capacity?
A. Second mate.
Q. How long had you been 2nd mate on the Martin at that time, Osborn?
A. From the first; when we started from Cleveland.
Q. How many trips had you been on board?
A. Two trips.
Q. How many trips had the vessel made in all?
A. I don't know exactly how many trips.
Q. What watch was on when the collision happened?
A. Starboard watch.
Q. Whose watch is that?
A. The captain's watch.
Q. What time did you go on watch that night?
A. At 12 o'clock, sir.
Q. Do you remember passing Bois Blanc light?
A. Yes, sir.

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A. Starboard watch.
Q. Whose watch is that?
A. The captain's watch.
Q. What time did you go on watch that night?
A. At 12 o'clock, sir.
Q. Do you remember passing Bois Blanc light?
A. Yes, sir.

Q. Whereabouts were you in the channel when you passed Bois Blanc light?

A. Well, a little to the westward of the centre, if anything, so far as I could see from the light.

Q. Was the captain on deck then?

A. Yes, sir.

Q. Had the captain gone below then?

A. No, sir.

Q. Did he go below after you passed Bois Blanc light?

A. Yes, he went below when the settler came aboard.

Q. Did he say anything to you when he went below?

A. Yes, sir.

Q. What did he say to you?

A. He told me to keep a sharp look-out, and if I saw anything to give it a good berth, and let him know.

(And counsel for the said libellants objected to conversation between parties previous to the collision being given in evidence, which objection was sustained by the said district court, and the examination proceeded.)

Q. Now, when the captain said this to you, what did you do?

132 A. I went forward, sir.

Q. Where did you go forward?

A. I went forward, sir, on the forehatch, and from that up on to the forecastle.

Q. Tell me whether or not you saw a tow coming up.

A. Yes, sir.

Q. Where was the tow when you first saw it after you got forward?

A. Just passing us.

Q. How far off was she?

A. Somewhere about 200 feet; somewhere thereabouts.

Q. When you got forward how was your boat, or the barque, with reference to the tug?

A. Right after the tug.

Q. What was the next thing you saw or remember of hearing?

A. I heard the tug blow her whistle.

Q. Could you see any lights ahead then?

A. Yes, sir; I saw both green and red lights of the propeller, and white lights.

Q. How did these lights bear from you then?

A. When I first saw them they right ahead of the tug; I could see all the lights over the starboard side of the tug; I suppose if I had come amidships the lights would appear about ahead.

Q. About how far ahead of the tug did the lights appear then?

A. Somewhere about half a mile.

Mr. MOORE, for libellants. That was when you was forward?

A. Yes, sir.

Q. Was this before or after the first whistle blew?

A. Just about the time, sir.

Q. What was the next thing you saw and heard?

A. I saw the propeller coming on in that direction.

Q. Showing what lights?

A. Both lights.

Q. Colored lights?

A. Yes, sir.

Q. You say you saw her coming on in that direction; now what was the next thing you saw or heard?

A. Well, sir, I was looking at the vessel to see how she was steering with reference to the tug.

Q. How were you steering?

A. We were steering after the tug; I didn't know which side the propeller was going to pass.

Q. What was the next thing you saw or heard?

133 A. I saw her coming on in that direction until the tug blew the second whistle.

Q. How was your vessel, with reference to the tug, when the tug blew the second whistle?

A. Just after the tug, sir.

Q. When did the tug blow the second whistle; how far off did the propeller's lights appear from the tug?

A. Well, sir, I don't know exactly; she was pretty near up to the tug.

Q. When the propeller blew the second whistle, what lights on the propeller could see then?

A. I could see her red light.

Q. When the tug blew the second whistle, what did the tug do?

A. She just kept right on ahead of us.

Q. Did she keep on until she got by the propeller?

A. Yes, sir.

Q. What did the propeller do then?

A. She sheered off to the starboard.

Q. What did you do?

A. I sang out, "Hard aport!"

Q. Where were you standing then?

A. On the forecastle, on the starboard side.

Q. What answer did you get from the wheel, if any?

A. "Hard aport it is," or something of that kind.

Q. Did the propeller pass the tug?

A. Yes.

Q. About how far off from the tug did she appear to pass?

A. Somewhere about 30 or 40 feet, it appeared to me.

Q. What else did you do then?

A. I looked to see how the propeller was coming on.

Q. Did she keep toward the Canada shore?

A. She kept toward the Canada shore a little.

Q. Where were you standing at that time?

A. On the starboard side of the forecastle deck.

Q. What was the effect of your order, if any, on your boat when you gave the order hard aport?

A. The barque didn't do anything.

Q. Why?

A. She hadn't time, sir.

Q. Well, you say the propeller come along; what did she do then?

A. Well, sir, we struck her.

Q. How did you strike her?

A. We struck her on the wheel-house, and our jib-boom carried away her wheel-house.

134 Q. Now, when your jib-boom struck her wheel-house, how was your vessel headed?

A. Pretty much down the channel.

Q. Which way, if any, had she begun to swing?

A. Well, she had commenced to swing to the American shore, but nothing of any account.

Q. Just as you touched the propeller were was the tug?

A. About two points off on our starboard bow.
Q. Which swing the fastest, the vessel or the tug?
A. The tug.
Q. After you touched her by the pilot-house with your jib-boom, how then did strike after that?
A. She shaved along the side until about amidships.
Q. Then what?
A. Then her shanks cut our cut-water, and we carried away her chains and some of her rigging, and her pilot-house.
Q. If the two vessels had been going the same way, how many points difference would there have been in their course when they first touched?
A. Somewhere between two points, two points and a-half, or three points.
Q. What was the effect of the blow on your vessel; how did it swing her, if any way?
A. It swung her back again towards the Canada shore.
Q. Did it carry away the tow-line?
A. Yes, sir; the propeller came into us so heavy that it snapped the tow-line right off.
Q. Where were you standing then?
A. I was just jumping down from the forecastle-deck down on the main-deck, and just about that time the line snapped off.
Q. Where were you standing when the line parted?
A. I had just got on the main-deck; I jumped because the chock gave way.
Q. Did you stand where you could see the line break?
A. If I had stood there, and looked at it, I could have seen it part; it was carried away just across our rails.
Q. Did you see it break?
A. Yes, sir; I did.
Q. What did you jump off of the forecastle-deck for?
A. On account of our chock being carried away.
Q. How fast do you think you were going past the land at that time?
135 A. Well, sir, I didn't notice much about it; I could not exactly tell.
Q. At what speed did the propeller seem to be coming down?
A. She seemed to be coming at a pretty good speed.
Q. Did you hear any bells rung on her to check her, or anything of that sort?
A. No, sir.

Cross-examination.

Q. Where was this line from the starboard bow which past through the chock; how far below the top of the rail was it?
A. About 5 inches.
Q. The line slipped forward, did it?
A. No, aft, sir.
Q. The chock broke and the line slipped forward on the rail, didn't it?
A. No, sir; it slipped aft towards the cat-head.
Q. Which way was the tug then at that time?
A. About a point and a half or two points off our bow.
Q. Was the line taut to the tug?
A. Yes, sir; very taut.

Q. And the tug was only a point and a half over it on your starboard bow?
A. Yes, sir.
Q. How far ahead of the tug was the propeller at the time the line broke?
A. I couldn't tell.
Q. How far was the timber-head aft of the chock?
A. I can't tell.
Q. Was it five feet?
A. More than that.
Q. Was it as far as from you to that door?
A. Yes, I think so; farther.
Q. Was it as far as from me to you?
A. Yes.
Q. Was it 15 feet?
A. No, I think not; I think it was about 10 feet, somewhere about; but I can't tell, I never measured it.
Q. Then the line slipped right back on the rail to the timber-head, did it?
A. No, sir.
Q. Where did it slip?
A. Up to the cat-head.
Q. How many points are there in a compass?
Q. There ought to be 32 points.
Q. Then eight points would bring it how far from the bow?
A. Eight points of the compass would bring it two points from the bow.
136 Q. Where were you when the captain went below?
A. I was there, sir.
Q. Whereabouts, sir?
A. On the forecastle-deck.
Q. How far is that from the stem?
A. Close to the stem.
Q. How long were you there?
A. About two or three minutes.
Q. Where were you during the rest of the time during the captain's watch?
A. Well, I was about on deck.
Q. At the time the settler came on board where were you?
A. Forward.
Q. Who else was forward?
A. Nobody.
Q. Was the captain forward?
A. Yes, sir.
Q. Anybody else?
A. I didn't notice anybody.
Q. Did you help make sail?
A. Yes.
Q. How long were you engaged in making sail?
A. I could not tell how long.
Q. About how long?
A. I couldn't tell, sir; about a couple of minutes.
Q. What sails were made while you were helping?
A. The mainsail.
Q. Was the mainstay-sail set up before you helped at this one?
A. Yes, sir.

Q. After you struck the propeller, did the whistle sound?
A. Yes, sir; I heard her whistle.
Q. Was there anything wrong with the whistle?
A. Yes, sir; the whistle was blowing all the time; it was out of repair, and it sounded until it sunk.
Q. It commenced to blow right after the collision, didn't it?
A. Yes, sir.
Q. Where were you when the first whistle sounded?
A. I was on the forecastle, sir.
Q. How long was the captain below?
A. I left him standing there; I don't know whether he went into the cabin; I went forward and did not see.
Q. How long before the 1st whistle was answered that was given by the tug?
A. It wasn't answered at all.
Q. How many whistles did you hear in all?
A. Two whistles.
Q. How far apart were they?
A. I don't know, sir; from twenty to thirty seconds perhaps.
137 Q. After you saw the lights of the propeller, did you say anything about it; did you report them to any one?
A. No, sir.
Q. You said nothing about it?
A. No, sir.
Q. This was your first season as 2nd mate?
A. No, sir; second season on these waters.
Q. Where did you sail as 2nd mate before?
A. On salt water.

Deposition of Peter Edgar.

And counsel for the said respondents produced—
Peter Edgar, who, being duly sworn, testified as follows:
Q. Where do you reside?
A. Cleveland.
Q. What is your age?
A. 39.
Q. What is your business?
A. Mariner.
Q. How long have you been a mariner?
A. 25 years I have sailed altogether.
Q. What countryman are you, let me ask?
A. Englishman.
Q. In what capacity have you sailed as mariner?
A. As boy before the mast, as mate and second mate, and captain.
Q. Where did you ever sail as captain?
A. I sailed from New York to Europe and back; I took a vessel over and brought her back.
Q. Is that all you sailed as captain?
A. Yes, sir.
Q. How long did you sail as mate?
A. Ten years as first officer.
Q. Whereabouts?
A. From Baltimore to Europe, and from New York to Europe.
Q. How long did you sail as second mate?
A. Three years.

Q. How long have you sailed on these western lakes?
A. One season.
Q. What season was that?
A. Last season.
Q. Were you on board the Maria Martin at the time of this collision?
A. Yes, sir.
Q. In what capacity?
A. Able seaman.
Q. How long had you been aboard of her at that time?
A. Two months and 20 days; about that time.
Q. In whose watch were you?
A. In the captain's watch.
Q. At what time did you go on watch?
A. At 12 o'clock, sir.
138 Q. Do you remember seeing Bois Blanc light?
A. Yes, sir; I remember seeing it.
Q. What were you doing then?
A. Steering the vessel after the tug.
Q. What were you orders as to how you were to steer her?
A. Keep her right after the tug.
Q. Tell me whether or not you steered by the compass at that time.
A. No, sir; I did not steer by the compass.
Q. What did you steer by?
A. By the light on the tug which was kept in afterpart of tug.
Q. Where does the tug carry her light to enable you to steer by it?
A. In the afterpart of her; I can't tell exactly where in the afterpart of the boat.
Q. When you passed the light, tell me how your boat was with reference to the tug.
A. Right after the tug, sir.
Q. Can you tell where your boat was then with reference to the centre of the channel?
A. No, sir.
Q. After you got by Bois Blanc light, what was the first order you heard from anybody?
A. Nothing, until the captain took the settler on board.
Q. Before the collision did you hear any order?
A. Nothing, except to put wheel aport.
Q. Where did that order come from, "wheel aport?"
A. From the main-deck close to the cabin.
Q. Could you tell who gave the order?
A. The mate.
Q. What were the words of the order?
A. "Aport."
Q. Was there any other than aport?
A. No, sir; only "hard aport" was the order.
Q. What did you answer when you heard the order?
A. Hard aport it is.
Q. When you got the order hard aport, how was your vessel with reference to the tug?
A. The tug was a little to the starboard bow when I got the order.
Q. Tell me whether or not you commenced to swing to starboard as soon as the tug commenced to sheer?
A. As soon as the tug began to sheer, I pulled the wheel towards me; this swung her to starboard.
Q. How far over did you get your wheel before the collision?

A. Had it over hard aport before the collision.

Q. How was the wheel at the time of the collision?

139 A. Hard aport.

Q. Did you keep it hard a port all the time after you got the order?

A. Yes, sir.

Q. What was the effect of keeping the wheel hard aport?

A. It sheered her to starboard.

Q. Can you say whether or not she did swing to starboard?

A. I could not say that she swung much; she had scarcely time; I could not tell how much.

Q. Before you put your wheel aport did you notice any other lights than the lights of the propeller anywhere ahead?

A. No, sir; I saw the propeller's lights and the tugs-boat's lights.

Q. What lights of the propeller did you see?

A. A bright light, white light, mast-head light.

Q. Did you see any colored lights?

A. No.

Q. Why not?

A. I could not see, for I was at the wheel, and the masts were right before me.

Q. Whereabouts is your wheel?

A. Aft of the cabin.

Q. How far aft of the taffrail?

A. Clear aft of that, sir.

Q. You say you saw the bright light of the propeller before you put the wheel aport?

A. Yes, sir.

Q. How did it bear from you?

A. About a quarter of a point on the starboard bow.

Q. by Mr. Moore. That was before you received the order to port?

A. Yes, sir.

Q. When did the tug commence to sheer?

A. Soon after she got up with the propeller.

Q. Which swung fastest, you or the tug?

A. The tug swung the fastest, sir.

Q. How much the fastest?

A. Considerable, five times as fast; she swung faster, because she had a broader rudder, and she was smaller, and because she hadn't got so much hold of the water.

Q. From the time the tug commenced to sheer down to the time of the collision, how far had the tug got off your starboard?

A. About a couple of points.

Q. Did you hear any whistles?

A. I heard some whistles; but I did not know where they came from.

Q. You paid no attention to them?

A. No, sir.

140 Q. Your business was merely to keep after the tug?

A. Yes, sir; that was my business, sir.

Q. Now, from the time the tug commenced to sheer to the starboard, I want to know how many points your boat swung up to the time of the collision.

A. I could not tell that.

Q. Did you notice any swing?

A. Not much.

Q. You just put your wheel hard aport and kept her there?

A. Yes.
Q. What sort of a steering vessel is yours?
A. A very good steering vessel; about as good a vessel as ever I saw.
Q. What kind of a wheel has she?
A. She has got a Boston patent—Hunt's patent screw-wheel.
Q. Is that a good wheel?
A. Yes, sir; they are the best wheels.
Q. Is it a quick wheel to handle?
A. Yes, sir; a quick wheel to handle.

Cross-examination.

Q. What was the first boat you sailed upon the lakes?
A. The Maria Martin.
Q. How many trips had you made on her?
A. About three or four; we came out in May; I don't know how many trips we had made, two or three.
Q. As able seaman?
A. Yes, sir.
Q. How much of the time had you the wheel?
A. About every three watches.
Q. You took the wheel that night at 12 o'clock?
A. Yes, sir; at 12 o'clock.
Q. What were you doing in the year 1865?
A. I was mate of the barque Clifton of Baltimore.
Q. What was her route?
A. From Baltimore to Rio Janerio, South America.
Q. What kind of a wheel had she?
A. She had a screw wheel, but not exactly the same as this; it was a worm-screw.
Q. If you wanted your vessel to swing to starboard with that wheel, which way did you put it?
A. I put the Clifton's wheel the same way.
141 Q. You turned it the same way?
A. Yes, sir.
Q. It swung the vessel the same way, did it?
A. Yes, sir.
Q. How much did you handle the wheel?
A. None at all, unless I took hold of her a moment.
Q. What vessel did you sail on before that?
A. I sailed on the barque Mandamar; I was mate of her.
Q. What kind of a wheel had she?
A. A rope—wheel-rope.
Q. Which way would you put her wheel to swing her to starboard?
A. The same way, sir.
Q. How long were you on her?
A. About two months.
Q. What other vessels did you handle the wheel of?
A. I handled the Mary Hall. I was second mate.
Q. What kind of a wheel had she?
A. Wheel-ropes.
Q. Which way would you put her wheel to swing her to starboard?
A. The same way.
Q. Did you put the wheels of all these boats the same way to swing them to starboard?
A. Yes, sir.

Q. You rolled the wheel to starboard?

A. Yes, sir.

Q. Were all the vessels swung in that way that you had anything to do with?

A. Yes, sir.

Q. Did you hear the order from the captain alone to put the wheel hard aport?

A. No, sir. I heard the order three or four times, and I couldn't tell who they were from, and I answered three times, I remember. I heard the order "port," and I sung out, "Wheel aport;" and then I heard the order hard aport, and I answered, "Hard aport;" and then I heard the order hard aport again, and I sung out again, "Hard aport it is." I heard the mate sing out port and hard aport, but I could not tell whether I answered his voice the 3rd time or not. I answered three times.

Deposition of David Trotter.

And counsel for the said respondents produced—

Captain David Trotter, who was duly sworn, & testified as follows:

Q. Captain Trotter, what is your age?

A. 35, sir.

Q. What is your business?

A. Seaman, sir.

Q. How long have you been a seaman?

A. For 20 years past.

Q. In what capacity?

142 A. In every capacity, sir, on board a vessel, from boy to master.

Q. On what waters?

A. 11 or 12 years on these waters, and the rest on salt.

Q. How many years have you been master?

A. Five years, sir.

Q. In what waters?

A. In these waters.

Q. In what trade?

A. Chicago, Buffalo, and Milwaukee, and the lakes generally.

Q. How many years were you mate?

A. Three, I think, sir.

Q. In the year 1866, what were you?

A. I was master of the barque Maria Martin.

Q. Were you part owner of the barque?

A. Yes, sir.

Q. What interest did you own?

A. One-eighth, sir.

Q. When did the Martin come out?

A. In May—I think about the 10th—of last year.

Q. What was the condition of the vessel, sir?

A. A new vessel, sir.

Q. What was her tonnage?

A. 568, new measurement, if I remember aright.

Q. What was her length over all?

A. I think 170 to 180 feet; in that neighborhood.

Q. Keel or deck?

A. I mean on deck. I think she is somewhere in the neighborhood of 170 or 180 feet.

Q. What kind of a vessel was she?

A. A first-class vessel.
Q. How was she rigged?
A. Square-rigged forward, main and mizzen masts.
Q. What watch did this collision take place on, captain?
A. My watch, sir.
Q. What time did your watch come on?
A. At 12 o'clock.
Q. Do you remember passing Bois Blanc light?
A. Yes, sir.
Q. Where were you when you passed Bois Blanc light with reference to the channel?
A. I think we were a little westward of the centre of the channel, if anything.
Q. How were you headed then with reference to the tug?
A. Right after the tug, sir, within half a point, I think; probably within a quarter of a point. The tug's light was just so you could see it on the port bow.
143 Q. On which side?
A. Starboard side.
Q. Tell me whether or not this is the usual way of steering under such circumstances.
A. Yes, sir; just so that you can see the light on whichever side the wheelsman stands.
Q. Now, where did the settler go aboard?
A. About half-way between Malden and Bois Blanc light.
Q. How long after he came on board did you remain on deck?
A. I remained on deck until I passed the Bois Blanc light.
Q. Where was the settler during that time?
A. He was on deck somewhere. I asked him if he was in a hurry, and he said no, and I had some orders to get the vessel ready for the lake, and walked forward and left him standing on the deck and went forward to the forecastle.
Q. When you went below deck, did you speak to any one, captain?
A. Yes, sir.
Q. Who did you speak to?
A. I told the settler to come down and I would settle the tug bill.
Q. Did you say anything to the mate?
A. Yes, sir. He was on the starboard side of the deck.
Q. What was he doing?
A. I don't know what he was doing; I called to him to come where I was, and told him to take charge.
By the COURT. Ask him, at that time, if he had seen the lights of the propeller.
Q. At that time, when you called the mate to you, had you seen the lights of the propeller?
A. I saw some lights off the forecastle before I left there; I saw some lights ahead, but I did not know what they were. I saw the tug was taking a westwardly course so as to clear them.
Q. What lights were these; do you know?
A. I didn't make a special observation; I saw lights a distance off, and I saw we were headed clear of them to the westward.
Q. Do you know what those lights afterwards proved to be?
A. They proved to be a tug going up the river with a tow. I think it was the tug W. K. Muir, and five or six vessels.
Q. Then, I understand you, you were heading to the westward
144 of the lights?

Yes, sir.

Now, when you called the 2nd mate to you to tell him what to do, did he go?

A. Straight forward. I told him to look out while I went below, sir.

Q. Where did you go?

A. I went into the cabin, sir; into my room.

Q. Whereabouts is your room?

A. It steps right off from the main-deck, sir; the door opens right off from the deck, sir.

Q. Who went with you?

A. The settler, sir.

Q. After you went to your room, tell me whether or not you came on deck again.

A. Yes, sir; I went into my room with the settler to settle the tow bill; I don't know for what length of time I was in there; when I stepped on deck again, I just stood outside the door, with the handle in my hand. I don't know what it was that caused me to come on deck. I suppose it the noise of something passing that attracted my attention.

Q. Did you see anything passing then?

A. I saw a tow passing.

Q. On which side?

A. On the port side.

Q. How far off?

A. The length of the vessel, sir, eastward.

Q. When you stood there did you look forward?

A. I just looked to see the position of the tug, to see if we were going all right.

Q. When you stood there with the door in your hand looking forward, how were you heading then with reference to the tug?

A. I saw the tug's light just off the jib-boom, nearly ahead.

Q. How was it with reference to following it, the same as when passing the Bois Blanc lights?

A. The same, sir.

Q. Whereabouts were you then with reference to the centre of the channel?

A. I was to the westward, sir.

Q. Which way were you heading with reference to the shore?

A. Heading so as to clear Bar Point.

Q. With reference to the Canada or the American shore, which way were heading then when you stood with the cabin door in your hand?

A. A little to the American shore with reference to the channel.

145 Q. State when you looked forward, if there was anything to obstruct you view.

A. No, sir.

Q. Then what did you do?

A. I went back and closed the door, and made out a draft to pay the tow bill. The next thing that occurred I heard the whistle. I was then in the room. I did not come out until I heard the second whistle. I should think the whistles sounded somewhere in the neighborhood of half a minute apart, more or less; when I heard the second whistle I signed the draft, and handed it to the settler, and put down the door of my desk, passed out, and the settler followed me right out. He was behind me about the length of me—close to me. The first thing I did when I got on deck was to look for the propeller. I saw her on my starboard bow about a point or less, sir; I could not see where the pro-

peller was with reference to the tug. The propeller was the first th that attracted my attention. I saw there was danger ahead, and I turned to the man at the wheel and sang out, "Hard aport," and I think he answered, "Hard aport it is, sir," and then I started to go forward. I think this had the effect to swing her a little to the starboard bow. I don't know what my vessel was doing then, but I think she swung a little. And very soon after that there was a collision, and nothing could be done. The moment the propeller had crossed, my jib-boom struck her, and on some part of the rail along forward, and kept running along until about midships, carrying away the chains and some of the rig-[rig]ing of the propeller, and went into her cabin. If we had both been running the same way when we first touched, I think there would have been about a point or a point and a half difference in our courses. When we struck, I felt the blow from the shock. I felt my vessel move back and tremble. She moved back with the propeller, and the recoil broke the tow-line. With reference to the position of my vessel as to the channel at the time the collision occurred, we were a little to the westward of the centre of the channel. Just at the moment of the collision we were headed just as near down the channel as we could do; if anything, a little westward. I don't think I could locate the tug at the moment of the collision; my attention was pretty much occupied
146 with the propeller. After the collision the propeller swung to the Canada shore and carried the barque with her. At the time of the collision we had on the mainsail and the mainstay-sail, pretty well made, sir. It is customary to make sail in this manner with reference to casting off from the tug. There is some current there. At the foot of Bois Blanc lights there is a current of a mile and four-fifths, and higher up it is from two miles to two and a half. It will average about two miles. Where the collision occurred the current is about a mile and a quarter. I have tested it some time this spring or latter part of winter. I tested it with a log and line. At the time I went below with the settler I should judge my vessel was moving at the rate of about five miles past the land. At the time of the collision the propeller was swinging rapidly to the starboard. The Martin is a very good steering vessel. She minds the helm a little better than the average; that is, when in plenty of water. When not in plenty of water she answers about the same as other vessels; vessels answer the helm slower in shallow water than in deep water. There is plenty of water there in the river, I think.

Q. In coming down the river Detroit, when a tug has a vessel in tow, what is the custom there with reference to the vessel following the tug?

A. That's her guide; the vessels follows the tug. The tug chooses the place in the channel, and governs the rate of speed of the vessel. The vessel has nothing to do with anything of that kind, except to follow. The tugs have a printed card of rates in the Detroit River, which regulates their charges. They charge according to tonnage, and fixed rates from place to place. Most of the tugs belong to one association; there may be one or two outside the association.

Cross-examination.

When my vessel passed Detroit, I was below. I think I had been up and down several times that night. My watch commenced at twelve; when I came on deck, we were about abreast of Wyandotte. From that
147 time until I went into the cabin with the settler, I was up and down, and around decks. The name of the settler is Frank Hackett;

he is a brother-in-law of mine. I have lived some at Malden; I have passed a good deal of the winter there. I have tested the current, and it was a mile and a quarter at the place of the collision; before that time I have always considered it about two miles. From Bois Blanc down to Bar Point, the current diminishes all the way. I tested the current some time in March. The way I come to notice my position in the river before I went into the cabin, I looked to ascertain the distance we were from land; nothing particulary called my attention to it; we were following the tug. Nothing occurred to put me on my guard as to land-marks, or anything of the kind. I was not sailing by the compass; I was following the tug. When I came out of my cabin, I think, the first vessel of this tow was passing us; that appeared to be following in line; she passed us about the length of our vessel. I don't think I heard the whistle before I stepped out; I don't recollect now of hearing it when I looked out. I didn't look for any lights when the whistle blowed the second time. I could not have been very long below; I would not undertake to give the time, from the fact that I was engaged with the settler, making out the draft to pay the tug bill. I sat down in the cabin to write the draft, but for nothing else; the draft was partly printed, and partly written; it was a printed blank in a book. When I stepped out first, I looked to see if we were following the tug. We kept the tug just far enough to the starboard bow to see the light; just about a quarter of a point. A vessel will mind her helm better in deep water than in shallow water. The water in the channel from the foot of Bois Blanc Island to Bar Point is from 25 to 28-29 feet; that I call good water. The depth of water where the propeller sunk must be about that depth. After the collision, I don't know whether my boat struck ground or not; I think not. We drifted down some ways inside of the propeller, towards the shore; when we got clear of the propeller, we drifted off toward the Canada shore.

Q. Can you tell by the map about where you were when you struck the shore?

A. I think I can.

(The witness was here shown a map which he marked to indicate about where his vessel struck the shore; after which he made the
148 following statement:)

The collision took place in the neighborhood of a mile of Bois Blanc lights, more or less. When I came out of the cabin, I should judge the propeller was about the length of herself from us. I think I saw the whole of her lights; I saw a great glare of lights. I think, to the best of my judgment, she was about 150 feet from us at that time; I would not say positively about that. I think she had swung somewhere over a point to starboard before we hit her. I could not tell how much she was swinging; if I had been on board of her, I could have told about that probably. I could not say whether she had swung any or not when I first saw her; I noticed she was swinging a little towards the time of the collision. I noticed she swung, by the stars; I noticed the stars and saw she was swinging; I did not particularize any stars. I signed a protest. I didn't have charge of the deck a few moments prior to the collision; the mate had charge while I was below. I had so much control of the deck, that I always said to him, when I was below, to take charge. It is the duty of the captain to keep a look-out. When we are going out, and in tow, the watch is called out. The mate acts as a look-out for the vessel.

Q. Is it not the duty of a master sailing a vessel in tow to keep the whole watch on deck?

A. I don't know, sir, whether it is or not when towing after a tug.

Q. Isn't it his duty to keep a look-out stationed?

A. I always have the officer of the deck look out for the vessel. I always tell my mate not to trust to a look-out, but to watch himself. When I am out on the open lake, I have a man on look-out. When the mate is on the deck, he places a look-out on the forecastle. When the mate has charge of the deck, the look-out is stationed there; when I am in charge of the deck, I place the second mate on look-out.

Q. Do you consider it your duty as an officer in charge of the deck to keep a look-out always stationed, whether out in the open lake, or while in tow?

A. While I am officer of the deck I keep a look-out, and order the mate to do the same, sir.

Re-direct examination

When I am towing down the river, my usual look-out is an
149 officer, sir; I never trust to any one else. When I am down in the cabin, I left the mate in charge. I do not have a special look-out besides the mate. That is my usual way of doing. I keep the watch on deck when we are going down the river, when there is anything to do, like stowing, and they are always in call. It is not usual for other vessels to keep a special look-out at such times besides the mate; the tug keeps look-out for the vessel. This is customary on other vessels, unless the mate has something else to do, and in that case the look-out is placed.

Re-cross-examination.

Q. Do you mean to say that it is more necessary to have a look-out stationed in the open lake than going down the Detroit River in tow?

A. No, sir; I do not.

Q. I will ask you if you consider it necessary, as a point of your duty, to place an officer as look-out while in tow going down the river, and no one else in charge of deck, but when you come into the open lake to put on a special look-out?

A. Well, the mate can act as look-out when there is nothing else to do; when you are not making sail, towing. When I am on the watch the second mate is look-out. The second mate was on watch the forepart of the night. I can't answer as to what was done by the mate. I always told him to put on a look-out. I don't know that there was a look-out placed on this occasion. The custom of my boat is, to never leave the deck without telling the mate to keep a sharp look-out.

Q. What men do you carry upon your deck during your watch while towing out the Detroit River?

A. Sometimes I have the whole watch on deck, so to have them ready in case we want to make sail, or have any work; if they are not on deck, the're in call.

Q. You can't tell me whether you keep them all on deck or not?

A. I always keep the watch in call.

Q. Well, you don't put them on shore, do you?

A. No, sir.

Deposition of Francis B. Hackett.

The counsel for the said respondents produced—

Francis B. Hackett, who, being duly sworn, testified as follows:

150 Q. Mr. Hackett, where do you reside?

A. In Amherstburg.
Q. Where is that?
A. About 18 miles below Detroit, on the Canada shore.
Q. What is your business at present?
A. For the last three years I have been employed in the collecting of tow bills.
Q. Then you are what they call a settler in this trial?
A. Yes.
Q. How long have you lived in that vicinity?
A. Ever since I was born; I was born on the island.
Q. On which island?
A. Bois Blanc.
Q. What has been your business for a number of years?
A. Well, I have been grappling for anchors in the river for the last three years.
Q. What connection had you with the light-house there?
A. Well, I attended to the light for a number of years; my father being old, I attended to it for him.
Q. Was he light-house keeper?
A. Yes, sir.
Q. Who had charge of the buoyos there?
A. I attended to them for seven years.
Q. Then you are familiar with the channel and river?
A. Yes, sir.
Q. And the depths of the water there?
A. Yes, sir.
Q. How often are the buoys set?
A. Once every spring, and taken up in the fall.
Q. What are the buoys set for?
A. To mark off the channel and bank, and protect boats passing up and down.
Q. Tell me whether or not they are set every spring by actual soundings.
A. Yes, sir; they are.
Q. In the employment of what government are you?
A. The British government.
Q. Is that a Canadian light-house?
A. Yes, sir.
Q. Tell me then, whether or not the whole of the channel along below Bois Blanc Island is in the province.
A. I should say it was. The whole of the island for ¾ of a mile, at least, and the whole of the channel, I am safe to say, is in provincial waters.
Q. Now give us the width, if you please, of the channel opposite the Bois Blanc light.
A. As near as I can get at it, to the best of my knowledge, it
151 is ¼ of a mile; I never measured it exactly.
Q. Well, now, we will take it about a mile and five-eighths below Bois Blanc Island; what is the width of the actual channel there?
A. Well, to the best of my knowledge, it is about ¾ of a mile. I should say fully ¾ of a mile.
Q. Then there is a shoal which stands out from the channel bank from the American side; whereabouts is that shoal?
A. It is between a mile & a mile and a half below the light-house.
Q. Below the light-house?
A. Yes, & is making every year.

Q. What do you mean by "making?"
A. Seems to be getting less water, and making out in the stream; father has noticed that for several years.
Q. What has been your own personal observation?
A. I have noticed that myself for seven years.
Q. Did you go aboard the Maria Martin that night?
A. Yes, sir.
Q. What for?
A. To collect a tow bill.
Q. Whereabouts was she when you went aboard?
A. About midway between Malden and the light-house.
Q. What means did you take to get aboard?
A. A small boat.
Q. Of your own?
A. Yes, sir.
Q. Built for that purpose?
A. Yes, sir; built for that purpose.
Q. Well, did you board the Martin?
A. Yes, sir; I went aboard the Martin; went aboard about midships.
Q. When you came aboard the Martin, what did you do?
A. Step'd aboard about midships, & walked forward.
Q. Then what did you do?
A. Leaned over the railing somewhere along about the timber-heaad.
Q. Then what did you do?
A. Stood there till Capt. Trotter was ready to go below and settle the tow bill.
Q. Then did you go below?
A. Yes, sir.
Q. Now, after you got into the captain's room, what was the next thing that occurred that you heard or discovered outside?
A. I heard one whistle.
Q. What did you do then?
A. Then I endeavored to get Captain Trotter to sign the draft, but before he signed the d'ft I heard another whistle.
152 Q. Now, when you heard the second whistle, what did you do?
A. Capt. Trotter put his name to the d'ft, and I started out of the cabin just as quick as he put his name to the d'ft.
Q. And the name of the gentleman whom it was on?
A. It was on Mr. Hamon; R. H. Hamon.
Q. The d'ft was?
A. Yes, sir.
Q. The d'ft was a blank one, I suppose, partly filled?
A. Partly filled.
Q. You started out, you say?
A. Yes, sir.
Q. And what did Captain Trotter do?
A. He started right after me.
Q. How far behind you was he?
A. He wasn't but a short distance.
Q. How many feet?
A. I thought he was touching me when I was going up.
Q. How did you go?
A. I walked out fast.
Q. When you got out on deck, what did you do?
A. I stepped right forward of where I went out of the cabin.
Q. How far forward?

A. I should judge five or six feet.
Q. Where did you step?
A. Stepped out on the main-deck.
Q. Forward?
A. Yes.
Q. You stepped out about how far from the cabin?
A. I should think about 5 or 6 feet.
Q. What did you discover?
A. Discovered a propeller.
Q. Tell me whether or not there was any head sails on the vessel.
A. No, sir; there were no head sails on the vessel.
Q. Have you ever sailed any?
A. Yes; sailed part of three seasons.
Q. In what capacity?
A. As a seaman.
Q. Now, you said as you stood there you discovered a propeller?
A. Yes, sir.
Q. Did you see anything of her lights?
A. I didn't take any notice of her lights; appeared to be a flash of lights together; I didn't take any notice of her lights particularly; I saw exactly how the propeller was.
Q. Whereabouts was the Martin with reference to the centre of the channel?
A. She was heading as near down the channel as I can speak;
153 if anything, a little to the west.
Q. In location, whereabout was she with reference to the centre of the channel?
A. She was well to the westward, as far as, I can say, she could go with safety.
Q. Now you say you noticed the propeller's glare of lights.
A. Yes, sir.
Q. How did they bear from the Martin?
A. About a point, I should judge, on the starboard bow.
Q. How far off, apparently, from the Martin?
A. Well, I should judge from a length and a half to two lengths, probably less; less, if any.
Q. Could you say whether or not the Martin was swinging at that time?
A. I didn't notice, sir.
Q. Could you see whether or not the propeller was swinging at that time?
A. Yes, sir.
Q. Which way was the propeller swinging?
A. Starboard toward the Canada shore.
Q. Describe how it was that the propeller came along from that point.
A. Just the moment I saw her, I think she would have taken the Martin's jib-boom if she had kept straight on.
Q. The Maria Martin's jib-boom?
A. Yes, sir; she kept slewing starboard going along; the Martin's jib-boom went into her about the pilot-house, or somewhere thereabouts; the cut-water struck her, I should judge, a little forward of amidships.
Q. What was the effect of the blow on the Martin?
A. It carried away her bob-stays, cut-water, & jib-boom.
Q. What effect did it have, if any, with reference to swinging her bow?
A. It swung her toward the Canada shore.

Q. How far about did they drift down before the propeller sunk?
A. I should judge between 2,000 to 3,000 feet.
Q. Now tell me whether or not, Mr. Hackett, you heard any orders given or board the Martin?
A. I heard "port," "hard aport," and "answer;" heard that before I came out of the cabin.
Q. How many times did you hear the order "port" and hard aport?
A. I heard it a good many times; I remember distinctly of
154 hearing it 3 times; I remember distinctly of hearing Captain Trotter, as soon as he come out of cabin, sign out, "Hard aport."
Q. Do you remember hearing it before then?
A. Yes, sir; I heard it while I was down in the cabin.
Q. Could you tell whether the order was by more than one voice before you came out of the cabin?
A. No, sir; I couldn't tell.
Q. Did you hear the answer from the man at the wheel?
A. Yes, sir.
Q. What was that answer?
A. "Hard aport it is."
Q. Did you hear any other orders than "port," "hard aport?"
A. Yes, sir.
Q. About how far below Bois Blanc light was it your judgment that this collision happened?
A. A mile and a quarter.

Cross-examination.

Q. You are a brother-in-law of the captain, Mr. Hackett?
A. Yes, sir.
Q. You are not a seaman, Mr. Hackett?
A. Well, I hav'n't followed it; no, sir, not for the last 7 or 8 years.
Q. What did you sail on when you sailed?
A. Schooner D. R. Martin.
Q. How long?
A. Part of one summer.
Q. You say you hav'n't taken any soundings as to depth of the water there lately in the channel?
A. Yes, sir; I have sounded it.
Q. How lately?
A. Sounded it this spring.
Q. Where?
A. Down abreast of the buoy.
Q. To determine the width, I am talking about. Have you determined the width by soundings?
A. Yes, sir.
Q. And measurement?
A. No, sir.
Q. And in your judgment the channel is ¾ of a mile wide there?
A. Yes, sir.
Q. What is the depth of water on the channel banks, in your judgment?
A. 12 feet of water.
Q. When you came out and saw the propeller dead ahead of you, you didn't know what lights you saw?
A. No, sir; I couldn't tell any other; I could see the whole pro-
155 peller just as she was there.

Q. She was a length and a half off?
A. I should judge it was that.
Q. Where was the tug?
A. I didn't notice the tug at all; I looked at the propeller, then looked at the shore to see how the propeller was heading, and see where she was, and how the propeller could get where she was.
Q. Did you look at the shore to determine the position of the Martin?
A. I looked to see how the propeller could get where she was.
Q. And yet she was heading directly towards you when you looked at her?
A. Her stem was headed as if she would strike our jib-boom end, or about that point.
Q. Didn't you answer a question a little while ago, when you first saw her she was coming directly ahead?
A. No, sir, not exactly ahead; her stern was headed for our jib-boom; she was not coming straight on to her that way, but a little on the starboard bow.
Q. Did'nt you say, Mr. Hackett, a little while ago, when you saw her she looked as though she would hit the end of your jib-boom in case she should strike?
A. Yes, sir; probably I didn't state—I meant to state she was not heading straight, she was on our starboard bow a little. It appeared to me if she had come straight on she would have taken our jib-boom.
Q. She was swinging to starboard, was she?
A. Yes.
Q. When you came out, how was the propeller headed?
A. She was headed in a direction as tho' she would take our jib-boom in.
Q. She was crossing your bow?
A. Yes, sir; she was headed for our jib-boom hand.
(The witness here explained, by the aid of models, the position of the two boats.)
Q. Now, sir, how much was the propeller off the port or starboard hand of the Martin?
A. Well, I judge off a point on the starboard bow.
Q. And one and a half her length off?
A. As near as I could judge, I couldn't be certain; it was nothing over it, I don't think.
Q. The tug you didn't see?
A. No, sir.
156 Q. The propeller was swinging?
A. Yes, sir.
Q. And you were headed right down the stream?
A. Yes, sir.
Q. What land-marks did you notice to see how she got in that position?
A. I noticed a tree.
Q. Where was the tree?
A. On the bank, about a mile and a quarter.
Q. What kind of a tree was that?
A. A large elm tree.
Q. You have seen it before?
A. I noticed it once before.
Q. You looked at it to determine her position when she was almost dead ahead, didn't you?
A. I couldn't say positive.

Q. Where was the tree?

A. About as near abreast as I could tell.

Q. And you looked at that for the purpose of determining the position of the propeller?

A. Yes, sir.

Q. Did that enlighten you?

A. The moment I came out of the cabin I looked at the propeller; I kept my eyes right on the propeller; I couldn't tell by the propeller how the vessel was heading.

Q. When you came out and saw the propeller, did you think to look at the tree?

A. No, sir.

Q. What did you do then, look around for the tree?

A. I didn't look around for the tree. I looked for the shore to see if I could get any object to give me an idea where she was.

Q. And she was one point off the starboard bows?

A. I should judge so.

Q. And she was crossing your bows?

A. Yes, sir.

Q. How far is it from Bois Blanc to Bar Point?

A. As near as I can judge, from two miles and a half; I don't know precisely.

Deposition of John Martin.

And the counsel for the said respondents produced—

John Martin, who, being duly sworn, testified as follows:

Q. Where do you reside?

A. In Cleveland.

Q. You are one of the parties to this suit, are you?

A. Yes, sir.

157 Q. One of the owners of the barque Maria Martin?

A. Yes, sir.

Q. How is she owned?

A. She is owned by Thomas Quayle, W. H. Harmon, John Martin, and Daniel Trotter.

Q. You are of the firm of Quayle and Martin?

A. We own $\frac{1}{16}$ less than $\frac{1}{3}$. The balance is owned by those other men and Capt. Trotter.

Q. Do you know the propeller Cleveland?

A. Yes, sir.

Q. How long have you known her?

A. I don't recollect whether five or six years. I built her.

Q. What is your business?

A. Ship-builder.

Q. At Cleveland?

A. Yes.

Q. How long engaged in the business?

A. Fourteen years.

Q. As a propeller ship-builder?

A. Yes, sir.

Q. Did you see the Cleveland after the collision?

A. I saw her after she was hauled out on the dry-docks.

Q. Where was that?

A. In Cleveland.

Q. Tell me whether or not you went aboard of her.

A. I did.

Q. Did you examine her to see whether she had been cut in two by the collision?

A. I found she was cut about midships. I measured the length on the side on which she was cut, and the distance in from the side.

Q. Tell me whether or not this model is calculated to give the side of the propeller on deck. What does this represent?—(pointing to the cut.)

A. That represents the cut.

Q. How far after the scar was the widest part of that notch?

A. It was 9 feet and 3 inches from this point to where the vessel struck.

Q. It cut into the boat 9 feet long?

A. Yes.

Q. On the side it was 9 ft. & 3 inches, and 2 ft. in?

A. Yes, sir.

Q. The cut in was 9 ft. long, and it was cut into the side two feet?

A. Yes, sir.

Q. Tell me whether or not that cut that you have marked now in this piece of wood indicates the character of the wound?

A. Yes, sir.

158 Q. Tell me whether or not you could discover any mark of where the stem had gone into it?

A. Well, what I took for the mark was right in the corner of the notch, on the port quarter.

Q. How was the Martin built with reference to being sharp?

A. She was not very sharp, about a medium.

Q. Did you build her?

A. Yes, sir.

Q. How was the cut-water of the Martin?

A. It was a cut-water rake; she raked considerably.

Q. How much?

A. Some 5 feet from the keel. In 13 feet of water she raked about 5 feet.

Q. Is that about a correct shape of the Cleveland's deck?

A. Yes, sir.

Q. Did you make this?

A. Yes, sir.

Cross-examination.

Mr. Martin, how soon after she was put into the dry-dock until you saw her?

A. I think it was the next day.

Q. Were there any others marks on her parts there forward?

A. I don't recollect noticing any. The upper works was all gone.

Q. How was it about the pilot-house?

A. I don't recollect seeing any pilot-house; don't recollect.

Q. How much freight would the Cleveland carry—how many tons?

A. Well, I suppose about 410.

Q. How much would the Martin carry?

A. The Martin would carry about 900; she would carry 35,500 bushels of corn.

W'm H. Williams recalled.

W'm H. Williams recalled:

Q. You stated yesterday that you helped raise the propeller?

A. Yes, sir.
Q. How far was she removed, if you can state, to the channel bank?
A. Well, I should think about a length and a half; not over that.
Q. In what depth of water was she left then after you removed her?
A. Between 11 and 12 feet forward; a little more aft.

159 *Cross-exam.*

As I understand you, after you raised her you moved about a length?
A. A length and a half.
Q. And then left her in about what water?
A. About 11 or 12 feet of water.
Q. Captain Williams, did you think to make any statements before the inspectors with respect to the circumstances of this collision?
A. No, sir; only on protest.
Q. You never went before the gov't or harbor inspectors with reference to making a statement after the collision?
A. Nothing, only what's in the protest.
Q. Were you ever cited to appear before any inspector?
A. No, sir.
Q. Ever anybody requested you to go?
A. No, sir.

(Here follows model marked page 159.)

Deposition of Asa C. Keating.

The counsel for the said libellants produced—
Asa C. Keating, who, being duly sworn, testified as follows:
Q. You are the agent of the Northern Transportation Co.?
A. I am the superintendent of that line.
Q. State whether you saw the inspector at Cleveland in relation to the master making a report of this collision.
Q. State whether you saw Captain Stannard, one of the inspectors.
A. I did, sir.
Q. State what he said to you about the necessity of making a report, and where the protest was made.
(Objected to. Objection overruled.)
You saw Mr. Stannard, the inspector, at Cleveland?
A. Mr. Benj. A. Stannard was one, Mr. De Forrest the other. Stannard enquired whether the protest was made out. He then told me that if the protest was made there was no necessity of making any statement to the steamboat inspector.

Cross-examined.

Q. You swear, then, that Captain Stannard told you that the protest was all the statement that was necessary to be made to the inspectors?
160 A. Captain Stannard told me that the protest was sufficient.
Q. Then you swear plainly that Captain Stannard told you that this protest was sufficient?
A. Yes, sir.
Q. Did he ask to see the protest?
A. No.
Q. Did he enquire by whom it was made?

A. No.
Q. Did he ask in what place it was made?
A. No.
Q. Did he ask you for the statements that it contained?
A. No.
Q. How long has Captain Stannard been inspector at Cleveland?
A. Some 14 or 15 years.
Q. Did you go to see the inspector for this conversation?
A. No; he met me on the sidewalk in front of our office.
Q. Who commenced the conversation?
A. He did.
Q. Did he ask you about this collision?
A. He did.
Q. Who was the other inspector?
A. De Forrest.
Q. And that is all you have ever done towards making a statement?
A. Yes, sir; that's all I have ever done.
Q. When did this interview take place?
A. Some time in the latter part of June.
Q. How long after the collision?
A. Well, I can't tell to the day. I reckon it was about that time, because I was on my return home.
Q. Is that the way Captain Stannard does his business as inspector?
A. I don't know, sir.
Q. Don't you know that statements are in the habit of being made before these steamboat inspectors?
A. I don't know.

Appraisement waived.

APRIL 30, 1867.—This day came the parties, by their counsel, and waived the appraisement of said barque Maria Martin, and by consent the value of said barque and the freight pending is valued at forty-two thousand five hundred dollars. And came John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as claimants of
161 said barque Maria Martin, her boats, tackle, apparel, and furniture, and presented their stipulation in the said sum of forty-two thousand five hundred dollars, with Albert M. Harmon as surety, conditioned that they shall abide and answer the decree of this court in this cause, and of the appellate court, in case of appeal; which is as follows:

Stipulation for release of barque.

District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the 12th day of November, A. D. 1866, by the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza A. Cogswell, against the barque Maria Martin, her boats, tackle, apparel, and furniture:

And whereas an intervening libel was filed on the 23rd day of November, A. D. 1866, by William Phelps, Owen Staples, and William H. Bruce, against said barque Maria Martin, &c.:

And whereas, also, an intervening libel was filed on the 4th day of December, A. D. 1866, by the Merchants' Insurance Company, against said barque:

And whereas the said barque Maria Martin, her boats, tackle, apparel, and furniture, is in the custody of the marshal under the process issued in pursuance of the prayers of said libels, as appears from said process now on file in said court:

Appearing personally John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as the claimants of the said barque Maria Martin, her boats, &c., and produced for surety Albert M. Harmon, and the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-two thousand and five hundred dollars, unto the said several libellants, that the said John Martin, Thomas Quayl, David Trotter, Ralph H. Harmon, and Albert M. Harmon shall abide and answer the decree of said court in each of the aforesaid causes, and of the appellate court upon appeal. And unless they shall so do, they do hereby severally consent that execution may issue forth against
162 them, their heirs, executors, administrators, goods and chattles, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.
DAVID TROTTER.

Taken and acknowledged this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S. Commissioner Northern District of Ohio.

NORTHERN DISTRICT OF OHIO, *ss:*

John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, & Albert M. Harmon, parties to the above stipulation, being duly sworn, depose and say that they are worth the sum of one hundred and fifty thousand dollars over and above all their just debts and liabilities.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.

Sworn to this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S. Commissioner Northern District of Ohio.

Order for warrant of restitution.

Whereupon, and by consent, it is ordered by the court that a warrant of restitution be issued to restore said barque Maria Martin, &c., to said claimants.

Warrant of restitution issued as follows:

163 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United

States for the district of Wisconsin, on the twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-six, by the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, and others, against the barque Maria Martin, her boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellant; and whereas the said barque Maria Martin, her boats, tackle, &c., has been attached by the process of the said court, in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also a claim has been interposed and filed in said court by John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, and such proceedings have been thereupon had, that, by the sentence and decree of said court in this cause, made and pronounced on the thirtieth day of April, eighteen hundred and sixty-seven, the said barque Maria Martin, her boats, tackle, apparel, and furniture, was adjudged to belong as claimed, and was ordered to be restored to the said claimant: Therefore you, the said marshal, are hereby commanded to release the said barque Maria Martin, her boats, &c., from arrest, and to deliver and return the same unto the said John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of these United States the ninety-first.

[U. S. D'CT SEAL.] J. M. MILLER, *Clerk.*

164 *Return.*

In obedience to the within warrant of restitution I have this 30th day of April, A. D. 1867, released the barque Maria Martin, her boats, tackle, apparel, and furniture, from arrest as commanded.

CASSUIS FAIRCHILD,
U. S. Marshal.

Fees, $189 00.

165 And now, at this same term, to wit, April term, 1867, and on the nineteenth day thereof, to wit, on the sixth day of May, A. D. 1867, the following proceedings were had, to wit:

Decree.

THE NORTHERN TRANSPORTATION COMPANY of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, & Eliza A. Cogswell

vs.

THE BARQUE MARIA MARTIN, HER BOATS, tackle, apparel, & furniture.

} In admiralty.

This day came the parties, by their proctors, and on consideration of the pleadings and proofs, and the arguments of counsel thereon, it is ordered, adjudged, and decreed by the court that this libel be and is

hereby dismissed at the costs of the libellants, taxed at one thousand and seventy-seven dollars and forty-two cents; and on failure to pay said costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Decree signed, recorded, & enrolled May 8th, A. D. 1867.

J. M. MILLER, *Clerk.*

Appeal.

And same day came said libellants, in open court, and prayed an appeal to the circuit court of the United States for the district of Wisconsin.

Appeal allowed.

Whereupon it is ordered by the court that the said appeal be, and is hereby, allowed; and that said libellants file an additional stipulation for costs in the sum of two thousand dollars within ten days.

MAY 8, 1867.—This day came the libellants and filed a stipulation, with O. J. Hale as surety, in the penalty of two thousand dollars, conditioned to pay all damages and costs as may be awarded against them.

Appeal bond.

Circuit court of the United States for the district of Wisconsin.—In admiralty.

166 Whereas an appeal has been taken to this court from the district court of the United States in the district of Wisconsin in a certain cause wherein the Northern Transportation Company was libellant against the barque Maria Martin, her boats, tackle, apparel, and furniture—John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, respondents—by the said libellant, and the said libellant has been ordered to give security, by the stipulation of competent sureties, in the sum of two thousand dollars, ($2,000,) for the payment of all damages and costs on the appeal in this court, and in the Supreme Court:

Now, therefore, the stipulators undersigned hereby stipulate in the said sum of two thousand dollars ($2,000) to pay all damages and costs on the appeal in this court, and in the Supreme Court, in case such appeal shall intervene.

O. J. HALE.

Taken and acknowledged this 8th day of May, 1867, before me.

J. M. MILLER, *Clerk, &c.*

DISTRICT OF WISCONSIN, *ss:*

O. J. Hale, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

O. J. HALE.

Sworn to this 8th day of May, 1867, before me.

J. M. MILLER, *Clerk.*

MAY 8TH, 1867.—This stipulation is approved and appeal allowed.

A. G. MILLER, *Judge.*

167 *Clerk's certificate.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to the certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the 92nd.

[SEAL.] J. M. MILLER, *Clerk.*

Filed July 29th, 1867.

SEPTEMBER 16, 1867.—Stipulation of the parties in writing filed as follows:

Stipulation as to testimony, &c.

In the circuit court of the United States, September term, A. D. 1867.

NORTHERN TRANSPORTATION CO. *vs* BARQUE MARIA MARTIN.	Appeal in admiralty.
MERCHANTS' INSURANCE CO. *vs.* IBID.	Do.
WILLIAM PHELPS *vs.* IBID.	Do.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

It is stipulated by the counsel of the respective parties, with the assent of the court, that these causes shall be heard in the circuit court upon the testimony submitted in the court below to the right
168 expressly reserved to the libellants of hereafter making proof of the damage by them sustained, and to the respondents to make proof as to the same subject, or as to the damage by them sustained, in such manner as this court shall direct, so that the same shall form a part of the record as fully as if given in at the trial, but so that the respondents may have appeal in the cases, in which all questions can be raised as to damages or otherwise, not waiving the right to take further evidence in the appellate court.

Sept., 1867.

FINCHES, LYNDE & MILLER,
For Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

SEPTEMBER 11, 1867.—This day came the appellants, by their counsel, and moved the court, on affidavit filed, for a continuance of this cause. On consideration whereof it is ordered by the court that said motion be and hereby is overruled.

Hearing.

SEPTEMBER 16, 1867.—This day came the parties, by their counsel—Messrs. Van Dyke, Newberry and Hibbard appearing for the respondents, and Messrs. Finch and Spaulding, for the libellants—and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and the hearing not being concluded, the further hearing was adjourned until to-morrow morning.

Hearing.

SEPTEMBER 17, 1867.—This day came the parties, by their counsel, and the further hearing of this cause was resumed before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and, being concluded, the same was held under advisement.

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law,
169 at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868—present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit—on the fourteenth day of said term, to wit, on the twenty-ninth day of September, A. D. 1868, the following proceedings were had, to wit:

Order.

THE NORTHERN TRANSPORTATION COMPANY
vs.
BARQUE MARIA MARTIN—JOHN MARTIN, THOMAS Quayle, David Trotter, & Ralph H. Harmon, claimants. } In admiralty.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the decree of the district court herein dismissing the libel be reversed; and this court finds that the propeller Cleveland and the barque Maria Martin were both in fault in causing the collision stated and set forth in the pleadings, and that the damages occasioned thereby ought to be divided; and it is ordered that it be referred to J. M. Miller, a commissioner, to report the amount of such damages, and who have sustained the same, to this court with all convenient speed, for which purpose the commissioner is directed to take further proof, pursuant to a stipulation of the parties filed.

D. DAVIS.

FEBRUARY 2, 1869.—Stipulation of the parties filed as follows, to wit:

United States circuit court, district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY of Ohio et al.
vs.
THE BARQUE MARIA MARTIN—JOHN MARTIN, Thomas Quayle, David Trotter, and Ralph H. Harmon, claimants.

170 THE MERCHANTS' INSURANCE COMPANY of Chicago.
vs.
THE BARQUE MARIA MARTIN.

WILLIAM PHELPS ET AL.
vs.
THE BARQUE MARIA MARTIN.

For the purpose of avoiding the expense and delay of taking proofs as to the amount of damages sustained by said libellants and claimants by reason of the collision mentioned in the pleadings in said causes, it is hereby stipulated that by a division of the damages (under the decision of said court in said causes) respectively sustained as aforesaid, by said libellants and claimants, the amount of damages for which a joint decree is to be entered forthwith in said court in said causes (by virtue of said decision) in favor of all of said libellants in said causes, is thirty-one thousand two hundred and forty-eight dollars, ($31,248,) said last-named amount being the excess of the one-half part of the damages sustained by the libellants, as aforesaid, over and above the one-half part of the damages sustained by the said claimants, as aforesaid; said causes to be consolidated for the purpose of appeal, and this stipulation shall not, nor shall the decree or form of the decree to be entered pursuant hereto, work any prejudice to the right of appeal to the Supreme Court of the United States by said libellants or claimants, the same being entered into for the purpose of consolidating said causes, and agreeing upon the amount of said joint decree.

SPALDING & DICKMAN,
& FINCHES LYNDE & MILLER,
Proctors for Libellants.
GEORGE B. HIBBARD,
EMMONS & VAN DYKE,
Proctors for Claimants.

171 And the record in said cause of the Merchants' Insurance Co. vs. the barque Maria Martin, her boats, &c., consolidated with this case, is as follows, to wit:

Be it remembered that heretofore, to wit, on the 29th day of July, A. D. 1867, a certified copy of record in the case of the Merchants' Insurance Company against said barque Maria Martin, her boats, &c., was received from the clerk of the district court of the United States for the district of Wisconsin, and filed as follows, to wit:

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the eighth day) of April, A. D. 1867—present, the Honorable Andrew G. Miller, judge of said court, presiding; Cassins Fairchild, marshal; John M. Miller, clerk—among other, the following proceedings were had, to wit:

THE MERCHANTS' INSURANCE COMPANY
against
THE BARQUE MARIA MARTIN—HER BOATS, tackle, apparel, and furniture, John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants.
} In admiralty.

Be it remembered that heretofore, to wit, on the fourth day of December, A. D. 1866, came the above-named libellants, by their proctors, Messrs. Spalding & Dickman and Messrs. Finches, Lynde & Miller, and filed their intervening libel against the barque Maria Martin, her boats, tackle, apparel, and furniture, as follows:

Libel.

To the Honorable Andrew G. Miller, judge of the district court of
172 the United States within and for the district of Wisconsin:

The Merchants' Insurance Company of the city of Chicago, in the State of Illinois, and a corporation created and existing under and by virtue of the laws of the State of Illinois, exhibit this their libel against the barque Maria Martin, her boats, tackle, apparel, and furniture, (whereof David Trotter is or lately was master,) now being in the custody of the marshal of the district aforesaid, under arrest, in virtue of a warrant issued out of this honorable court at the suit of the Northern Transportation Company of Ohio; the Buckeye Mutual Insurance Company of Cleveland, Ohio; N. D. Hunter, of Chicago, in the State of Illinois; Charles J. Hill, of Gloversville, in the State of New York; George C. Reed, of Detroit, in the State of Michigan; Joseph Cogswell, & Eliza A. Cogswell, his wife, of Akron, in the State of Ohio; and against all other persons lawfully intervening for their interest therein, in a cause of collision, civil & maritime. And thereupon the said Merchants' Insurance Company, libellant, doth allege and articulately propound as follows, to wit:

First. That before and at the time of the collision hereinafter mentioned, the steam-propeller Cleveland, hereinafter mentioned, and the said barque Maria Martin, were vessels, each of them more than twenty tons burthen, and enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States & Territories of the United States, upon the lakes and navigable waters connecting the said lakes within the true intent and meaning of the act of Congress; and that the said barque Maria Martin now is of said tonnage, and so enrolled, licensed, and employed.

Second. That on or about the eighteenth day of June, A. D. 1866, the

said propeller Cleveland, with one William H. Williams as her master, departed from the port of Ogdensburgh, in the State of New
173 York, bound for the port of Chicago, in the State of Illinois, & having on board a valuable cargo of sugar and other goods, wares, & merchandize, and about fifty passengers; that the said propeller was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackled, appareled, and appointed, and during all the times herein mentioned had a full complement of competent officers and men, and was in every respect fit for the voyage she was about to undertake; that said propeller proceeded on her voyage safely and without accidents until about or soon after two o'clock in the morning of the twenty-second day of June, A. D. 1866, when, shortly after passing Bar Point on the Canada shore, and hauling upon her course for the entrance of the Detroit River, the said propeller being on a northerly course, made a tug with a tow coming down on a southerly course, which afterwards proved to be the tug "George B. McClellan," having in tow by a stern-line the said barque Maria Martin; that soon afterwards the said tug, being right ahead of said propeller, gave one blast of the whistle, which was answered with one blast of the whistle by said propeller; whereupon the said propeller instantly put her wheel aport, became steady on her course, and was going all clear, and passed to the right, the said tug and the Maria Martin respectively showing at that time their red light to the said propeller; that when said propeller, with her wheel aport as aforesaid, came abreast of said tug, and distant a hundred feet and upwards from her, it was discovered on board said propeller that the Maria Martin had shut out her red light from the view of said propeller; whereupon the wheel of said propeller was at once put hard aport, and said propeller swung off towards the Canada shore; that the said propeller Cleveland then discovered the said barque Maria Martin's green light not more than fifty feet off, the said barque then heading partly towards the Canada shore, and with her jib-boom almost into said propeller's port-bow, & immediately thereafter, notwithstanding the engine of said propeller was stopped, & every other effort made by her officers and
174 crew to avoid a collision, the Maria Martin ran into and afoul of said propeller, her jib-boom striking the propeller's foremast, and throwing the propeller's mate overboard from the top of the pilot-house, her bow striking the propeller on her port side a little forward of amidships, and cutting down the propeller below the water-line, and otherwise so greatly damaging and injuring her that she began to fill with water, and, in spite of the most strenuous exertions of all on board of said propeller to keep her afloat, she, with all her cargo, in about ten minutes after said collision was completely sunken and submerged in five fathoms water, near the mouth of the Detroit River, whereby the greater portion of said cargo was totally lost, and the owners of said propeller were compelled to abandon her as she lay as and for a total loss, the passengers on board said propeller having with difficulty saved their lives by getting aboard the Maria Martin.

Third. That the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of the said Maria Martin, her master, officers, and crew, and not from any fault, omission, or neglect on the part of the said propeller, her master, officers, & crew; that the Maria Martin, as the libellants are informed & believe, had not before, or at the time of said collision, a proper look-out and watch to guard against the danger of a collision, and her officers and crew were not then at their proper places and attentive to

their duties; that when the tug gave one blast of the whistle, as aforesaid, it was the duty of the Maria Martin instantly to put her helm to port, and to pass to the right, which she neglected to do; that she should not (as she did) have departed from the course which care & prudence & good seamanship required her to follow as a vessel in tow; that the said propeller, from the time she first made the said tug with a tow as aforesaid, resorted to all the means to which she could with propriety resort, to keep out of their way; that at and before the time of said collision the said propeller had competent & sufficient officers
175 and crew at their proper places, and attentive to their duties, keeping watch and ward for her safe management, and had a proper look-out properly stationed and vigilantly employed in guarding against the danger of a collision, and had proper signal-lights, as required by law, properly displayed and brightly burning; & that by reason of the negligence, inattention, and want of proper care, caution, and skill on the part of the master, officers, and crew of the said Maria Martin, these intervening libellants have sustained the damages hereinafter mentioned.

Fourth. That, at the time of said collision, Henry W. Hinsdale, Sylvester Sibley, and William F. Endicott, of Chicago, in the State of Illinois, copartners under the firm-name of Hinsdale, Sibley & Endicott, were the owners of thirty-seven hogsheads of sugar, which were then on board said propeller, and a part of her cargo for said voyage, which sugar was of the value of six thousand four hundred and one dollars and twenty-nine cents, and which became a total loss by and through said collision, and by reason of the careless, negligent, unskilful, and improper management of the said barque Maria Martin; that said libellant, the Merchants' Insurance Company, had issued a certain policy or contract of insurance, outstanding & valid at the time of said collision, by which said insurance company insured said sugar in the last-mentioned sum to the said Hinsdale, Sibley & Endicott, against marine risks and disasters, (one of which was damage or loss by collision,) and by reason of said insurance became liable & bound to pay to said Hinsdale, Sibley & Endicott their losses by said collision, as covered by said policy; that said Hinsdale, Sibley & Endicott, after said collision and loss, absolutely and unconditionally abandoned, ceded, and transfered to said insurance company as & for a total loss the said sugar, and all their interest therein, together with all hope of recovering the same, if any, & all right the said Hinsdale, Sibley & Endicott had, or might have, or be entitled unto, to sue for or recover for
176 the damage sustained in and by the loss of said sugar, and for the value thereof, which abandonment, cession, or transfer was duly accepted by said insurance company; and said insurance company has paid to said Hinsdale, Sibley & Endicott the said sum of money for which said sugar was insured as aforesaid, and by reason of the premises has been subrogated to and entitled to enforce all rights, claims, and demands, in respect to said sugar, or the loss thereof, against the said Maria Martin, her master, or owners, or other parties liable therefor, and to sue for or recover for the damage sustained in and by the loss of said sugar, and for the value thereof. Wherefore the said Merchants' Insurance Company, by said collision and the loss of said sugar, has sustained damages to the amount of six thousand four hundred and one dollars and twenty-nine cents, for which it claims reparation in this suit.

Fifth. That at the time of said collision George C. Cook and Henry W. Cook, of said city of Chicago, copartners, under the firm name of

G. C. Cook & Company, were the owners of seventy-five barrels of sugar which were then on board said propeller, and a part of her cargo for said voyage, which sugar was of the value of two thousand seven hundred and eighty-three dollars and sixteen cents, and which became a total loss by and through said collision and by reason of the careless, negligent, unskilful, and improper management of the said barque Maria Martin; that said libellant, the Merchants' Insurance Company, had issued a certain policy or contract of insurance, outstanding and valid at the time of said collision, by which said insurance company insured said sugar in the last-mentioned sum to the said G. C. Cook & Company against marine risks & disasters, (one of which was damage or loss by collision,) and by reason of said insurance became liable and bound to pay to said G. C. Cook & Company their losses by said collision as covered by said policy; that said G. C. Cook & Company, after said collision and
177 loss, absolutely and unconditionally abandoned, ceded, and transferred to said insurance company, as and for a total loss, the said sugar and all their interest therein, together with all hope of recovering the same, of any and all right the said G. C. Cook & Company had or might have or be entitled unto, to sue for or recover for the damage sustained in and by the loss of said sugar, and for the value thereof, which abandonment, cession, or transfer was duly accepted by said insurance company, and said insurance company has paid to said G. C. Cook and Company the said sum of money for which said sugar was insured as aforesaid, and by reason of the premises has been subrogated to and entitled to enforce all rights, claims, and demands, in respect to said sugar or the loss thereof, against the said Maria Martin, her master or owners, or other parties liable therefor, and to sue for or recover for the damage sustained in and by the loss of said sugar, and for the value thereof. Wherefore the said Merchants' Insurance Company, by said collision and the loss of said sugar, has sustained damage to the amount of two thousand seven hundred and eighty-three dollars and sixteen cents, for which it claims reparation in this suit.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore this libellant prays that process of monition may issue to the marshal of the district aforesaid, commanding him to cite and admonish all persons having, or pretending to have, any right, title, or interest in the said barque Maria Martin, her boats, tackle, apparel, and furniture, to appear before this honorable court on such day, to be inserted in the said monition, as the court shall direct, to answer the libellant in the premises according to the course of courts of admiralty and the rules and practice of this honorable court in civil cause of admiralty & maritime jurisdiction, and also that a warrant of arrest, in due form
of law, may issue to the said marshal against the said barque, her
178 boats, tackle, apparel, & furniture, and that this honorable court will pronounce for the libellant's aforesaid demands, and decree the same to be paid with costs.

The Merchants' Insurance Company,

By FINCHES, LYNDE & MILLER, *Proctors.*

WM P. LYNDE, *Advocate.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

William E. Rollo, being duly sworn, deposes and says that he is the secretary of the Merchants' Insurance Company; that he has read the

foregoing libel; and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

W'M E. ROLLO.

Subscribed & sworn to before me this 30th day of November, A. D. 1866.

[SEAL.] PHILIP A. HOYNE.
U. S. Commissioner Northern Dist. Illinois.

[5-cent stamp canc.]

And same day (December 4, 1866) said libellants filed their stipulation in the sum of $250 00, with W'm P. Lynde & Benjamin K. Miller as sureties, conditioned that the said libellants shall abide by the final decree entered in this cause and shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appellate court, as follows:

Libellant's stipulation.

179 District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, by the Merchants' Insurance Company against the barque Maria Martin, her boats, tackle, apparel, & furuiture, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or its sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against it by this court or, in case of appeal, by the appellate court.

B. K. MILLER.
WM. P. LYNDE.

Taken and acknowledged this 4th day of December, 1866, before me.
J. M. MILLER, *U. S. Commissioner.*

180 *Order for process and advertisement.*

Whereupon it is ordered by the court that process issue to the marshal, returnable on the fourteenth day of December inst't, at eleven o'clock in the forenoon, and that this court will, on that day, proceed to the trial & hearing thereof.

And it is further ordered that notice by given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial for at least six days.

Whereupon a monition issued, as follows:

181 *Monition.*

DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, by the Merchants' Insurance Company against the barque Maria Martin, her boats, tackle, apparel, and furniture, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said barque or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said barque or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the district of Wisconsin, on the fourteenth day of December instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

[U. S. D. C'T SEAL.]

J. M. MILLER, *Clerk.*

FINCHES LYNDE, & MILLER, *Proctors for Libellant.*

[50-cent U. S. int. rev'e canc'd.]

182 *Return.*

In obedience to the within precept, I have this fourth day of December, A. D. 1866, attached the barque Maria Martin, her boats, tackle, apparel, and furniture, at Milwaukee; and have given due notice by advertisement for sixty days in the Milwaukee Daily News, and by posting notices to all persons claiming the same, that this court will, on the fourteenth day of December, 1866, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

Fees, $7 61.

CASSIUS FAIRCHILD, *Marshal,*
By W'M S. JACKSON, *Deputy.*

JANUARY 14TH, 1867.—This day came John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, claimants of said barque Maria Martin, &c., by Messrs. Emmons & Van Dyke, their proctors, and presented their stipulation, with Robert P. Fitzgerald and John B. Merrill as sureties, in the sum of two hundred and fifty dollars, conditioned "that they shall abide and answer the decree of this court in this cause as to costs," which stipulation is as follows:

Claimants' stipulation.

183 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, by the Merchants' Insurance Company against the barque Maria Martin, her boats, &c., for the reasons and causes in the said libel mentioned:

And whereas the said barque Maria Martin, her boats, &c., are in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said monition now on file in said court:

Appearing John Martin & others, by their proctors, Messrs. Emmons & Van Dyke, as the claimant of the said barque Maria Martin, and produced for sureties Robert P. Fitzgerald and John B. Merrill, and the said Robert P. Fitzgerald & John B. Merrill, & John Martin et als., submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred & fifty dollars unto the said Merchants' Insurance Company that the said claimants & sureties shall abide and answer the decree of the said court in the aforesaid cause as to costs, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN & OTHERS,
By EMMONS & VAN DYKE, *Proctors.*
ROBERT P. FITZGERALD.
JOHN B. MERRILL.

Taken and acknowledged this 14th day of January, 1867, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

Robert P. Fitzgerald and John B. Merrill, parties to the above stipulation, being duly sworn, depose and say that they are each worth the sum of two hundred & fifty dollars over and above all his just debts and liabilites.

R. P. FITZGERALD.
JOHN B. MERRILL.

Sworn to this 14th day of January, 1867, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

184 And same day (January 14th, 1867) came said claimants, by their said proctors, and presented to the court their answer.

Hearing, &c.

APRIL 3RD, 1867.—This day came the parties, by their counsel, Messrs. Spalding & Dickman, Moore & Finches, Lynde & Miller, for libellants; and Messrs. Newberry, Hibbard, and Emmons & Van Dyke, for respondents; and said respondents filed amendments to the answer as per stipulation filed; and said libellants filed their replication; and, by consent, the testimony of witnesses was taken in open court; and this cause came on to be heard upon the pleadings and proofs, and not being concluded it was adjourned until to-morrow morning.

And said stipulation as to answer is as follows:

Stipulation as to answer.

U. S. district court, district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY and others
vs.
THE BARQUE MARIA MARTIN, &c.

WILLIAM PHELPS & OTHERS
vs.
THE SAME.

THE MERCHANTS' INSURANCE COMPANY OF Chicago
vs.
THE SAME.

It is hereby stipulated and consented that the amendments to the answers in these three cases respectively may be substituted for so much of the answers in these cases respectively (the amendments in each case being so substituted in the answer in the case the amendments purport to be in) as precedes the last two articles in the answers respectively, said two articles being the ones in which limited liability,
185 under the act of 1851, is referred to, and the general allegations that all and singular the premises are true. The subsequent articles, in the answers respectively, may also be properly numbered; said amendments are those which have been submitted to the undersigned.

April 1, 1867.

SPALDING & DICKMAN,
Proctors for Libellants.
FINCHES, LYNDE & MILLER,
Proctor for Libellants.

And said amended answer is as follows:

Amended answer.

In the district court of the United States within and for the district of Wisconsin.—In admiralty.

To the Honorable Andrew G. Miller, judge, &c.:

The claim and answer of John Martin, Thomas Quayle, David Trotter,

and Ralph H. Harmon, respondents, to the libel of the Merchants' Insurance Company of the city of Chicago, in the State of Illinois, against the barque Maria Martin, her tackle, apparel, &c.

And hereupon the said respondents answer and allege as follows:

First. That the said respondents are, and, at the time of filing said libel and the collision therein mentioned, were the sole, true, and bona-fide owners of the barque Maria Martin in said libel mentioned, her tackle, apparel, and furniture, and that no other person is owner thereof.

Second. The said respondents admit the allegations of the first article of said libel to be true.

Third. The said respondents say that they have not any knowl-
186 edge, information, or belief of any of the matters in the second article of the said libel stated, or of any of the allegations in the said second article contained and not hereinafter specifically admitted, except such as is derived from hearsay or the said libel. The said respondents deny each and every allegation in said second article of the said libel contained, except such as are hereinafter specifically alleged or admitted to be true, and say that many of the matters in said second article are untruly alleged and pleaded, and they demand strict proof of each and every allegation in the said second article contained, except such as are hereinafter specifically admitted to be true. The said respondents admit and allege that in the morning of the 22d day of June, 1866, and after one o'clock in the said morning, but before it was light, the said barque, she then being tight, staunch, well officered, manned, equipped, and provided, and laden with a cargo of grain, with David Trotter for her master, was on the Detroit River, below Bois Blanc Island, bound on a voyage in the pursuit of her aforesaid business, from Chicago, in the State of Illinois, to Buffalo, in the State of New York; that the wind was light from the westward, the night was clear and without fog, and the barque was proceeding at a moderate speed upon a southerly course, in tow of the steam-tug George B. McClellan, with a tow-line of about three hundred feet long, and following the said tug according to the immemorial, general, and universally known custom and usage of the river, the said barque, as to her course, being according to said custom and usage under the control and direction of the tug, the tug and her owners having contracted to tow and take the said barque from a point in the St. Clair River to Lake Erie, and the said tug being engaged in the performance of the said contract; that the barque then carried and displayed good and proper signals lights as provided by law, having on the starboard side a green light, and on the port side a red light, and had good and proper watch and look-out; that
187 while the barque was so proceeding the propeller Cleveland was in the river, bound up the river, and upon a northerly course, and was so proceeding up the river very fast and at an immoderate and improper rate of speed; that a short time (but how long the respondents are unable to state) before the collision herein mentioned happened, and while the barque was so proceeding, and the tug and barque were in their proper places in the river, lights of the propeller Cleveland were made from the barque ahead or nearly ahead of the tug, the tug then being ahead of the barque. The tug blew a single whistle twice, with a proper interval to show that the two blasts were not connected, and ported her helm, and the barque ported her helm and put her helm hard aport, and both swung to starboard, the tug being the smaller vessel and with much the smaller draft of water swinging more rapidly than the barque. That at the time when the helm of the tug and

barque were ported the tug and barque were both in their proper places in the channel and in the river, and both swung, and from thence down to the time of the collision continued to swing, to starboard. That the propeller did not slacken her speed, but proceeded at an immoderate, improper, and fast rate of speed, approached the tug upon a course which brought her too near the said tug, passed the tug too near and very close to her and so proceeded; that before the collision her bow bore a little off the barque's starboard bow, and a very short time before the collision the propeller put her wheel aport and threw her bow across the bows of the barque, and the barque and propeller came in collision, striking their port bows together; that soon after the collision the propeller sank; that the collision happened entirely without any fault, negligence, careless, or unskilfulness on the part of the barque or any of her officers, crew, servants, or agents, or any of the servants or agents of her owners, and by means and in consequence of
188 the faults, negligence, want of vigilance, carelessness, and unskilfulness of the propeller Cleveland, her officers and crew, and, among other things, for the reason that the said propeller Cleveland was proceeding, and down to and at the time of collision, proceeded, at an immodcrate and improperly fast rate of speed; that she approached the said tug and the said barque upon a course which would and did bring her too near the same, and passed the said tug too near the same; that she did not take or keep upon her proper course and place in the channel, but on the contrary thereof went too far to the westward; that she did not change her course or take the proper steps so as to keep out of the way of and not collide with said barque, and was in other respects in fault.

Fourth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the third article of the said libel stated or of any of the allegations in the said third article contained and not in this answer specifically alleged or admitted to be true, except such as is derived from hearsay or the said libel. The said respondents deny each and every allegation in said third article contained, except such as are so admitted to be true, and they demand strict proof of each and every allegation in the said third article not so specifically admitted to be true.

Fifth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fourth article of the said libel stated or of any of the allegations in the said fourth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said fourth article contained, and demand strict proof thereof.

Sixth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fifth article of
189 the said libel stated, or of any of the allegations in the said fifth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said fifth article contained, and demand strict proof thereof.

Seventh. The said respondents deny that all or singular the premises in said libel are true.

Eighth. And the said respondents, further answering, allege that the said barque, during, and at each and all the times in the said libel mentioned, was a ship and vessel of the United States of the burthen of twenty tons and upwards, duly enrolled and licensed for and employed in the coasting trade of the United States, as is hereinbefore admitted, and, at the time of said collision, was engaged in the perform-

ance of a voyage and the carriage of a cargo from Chicago to Buffalo as is hereinbefore stated, with freight then pending; that she then was not, and is not, a canal-boat, barge, or lighter, or used in rivers or inland navigation; that at the time of the happening of the said collision, and just before the same happened, the value of the said barque was, as near as the said respondents can state, and, as they allege the same, forty thousand dollars, and that her freight, then pending payable on the delivery of her cargo, but not then earned, was, as near as the said respondents can state, and as they allege the same, four thousand four hundred & eight $\frac{5}{100}$ dollars; that by the collision herein mentioned (which is the same collision in said libel referred to) several owners of property suffered loss, damage, and injury to property owned by them respectively, (but who, or to what kind of property, or to what precise extent, the said respondents are unable to state,) greater than the value of the said barque and her freight then pending; that the said
190 collision, and each and all the alleged losses and damages in said libel referred to, (if any such losses or damages happened or were ever done, occasioned, or incurred, the respondents as aforesaid deny,) happened, were done, occasioned, and incurred without the design, neglect, privity, or knowledge of the respondents, and that therefore, and pursuant to the act of Congress of the United States entitled "An act to limit the liability of ship-owners, and for other purposes," approved March 3, 1851, the said libellant cannot in any event (and the said respondents expressly deny that it can recover or have decree for any amount) recover or have decree for any greater or larger sum that a proportion of the value of the said barque, which shall bear the same proportion to the whole value thereof as the amount of the alleged losses and damages in said libel mentioned bears to the whole loss and damages done, occasioned, or incurred by the said collision, and the said respondents pray that they may have the same benefit and advantage of the matters stated and referred to in this eighth article of this answer as though they plead the same otherwise, or were able to plead and did plead the same more fully and particularly, and allege that they have pleaded the same as fully and particularly as they are able to do.

Ninth. That all and singular the premises are true.

And hereupon the said respondents pray that the said libel may be dismissed with costs, and that the said respondents may have such other and further, or other or further, relief or decree in the premises as may be meet.

JOHN MARTIN,
THOMAS QUAYLE,
DAVID TROTTER,
RALPH H. HARMON,
By GEO. WILLEY,
Their Agent & Proctor.

GEORGE B. HIBBARD,
WILLEY & CARY, &
EMMONS & VAN DYKE,
Proctors for Respondents.

NORTHERN DISTRICT OF OHIO,
191 *City of Cleveland, ss:*

Ralph H. Harmon, respondent, being duly sworn, deposes and says that he resides in the city of Cleveland, in the northern district of Ohio; that he is one of the respondents named in the foregoing answer;

that he knows as much of the matters therein stated or referred to as the others of the said respondents; that he has read the foregoing answer, and knows the contents thereof; and that the same, and the matters therein stated, are true according to the best of his knowledge, information, and belief.

R. H. HARMON.

Subscribed and sworn to before me, the clerk of the United States district court for the northern district of Ohio, in said district, this thirty-first day of December, 1866.

In witness whereof I, the said clerk, have hereunto subscribed my name officially, and affixed the seal of said court, the day and year last above stated.

[SEAL.] FR. GREEN, *Clerk.*

And the said complainants, by their proctors, filed their replication as follows:

Replication.

U. S. district court for the district of Wisconsin.

THE MERCHANTS' INSURANCE COMPANY }
vs.
THE BARQUE MARIA MARTIN. }

The replication of the Merchants' Insurance Company, libellant, to the answer of John Martin, Thomas Quayle, David Trotter, and Ralph Harmon, respondents, alleges that the said libellant will aver, maintain, and prove its libel to be true, certain, and sufficient, and that the said answer of the said respondents is uncertain, untrue, and insufficient; and they humbly pray as in and by their said libel they have already prayed.

FINCHES, LYNDE, & MILLER,
Proctors for Libellant.

192 *Hearing continued.*

APRIL 4TH, 1867.—This day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

APRIL 5TH, 1867.—This day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

Held under consideration.

APRIL 6TH, 1867.—This day came the parties, by their counsel, and the hearing of this cause was concluded, and the court, not being sufficiently advised, held the same under consideration.

APRIL 9, 1867.—This day came Mr. Dickman, proctor for libellants, and Mr. Van Dyke, proctor for respondents, and filed the testimony taken in court by short-hand reporter, and same day filed stipulation as follows:

Stipulation filed as to testimony.

United States district court, district of Wisconsin.

THE NORTHERN TRANSPORTATION COMPANY of Ohio
vs.
THE BARQUE MARIA MARTIN.

THE MERCHANTS' INSURANCE COMPANY
vs.
THE SAME.

WILLIAM PHELPS ET AL.
vs.
THE SAME.

It is hereby stipulated and agreed that the testimony taken in behalf of said libellants and respondents at the hearing of said cases in April, 1867, in Milwaukee, before Judge A. G. Miller, in short-hand, and afterwards written out in full by the reporter, and revised by Messrs. Van Dyke, Lynde, and Dickman, shall be deemed and treated as testimony regularly taken before a U. S. commissioner signed by the witnesses, and taken according to law, and shall be used as such in all stages of said cases. And no question is raised in said cases as to the ownership of the propeller Cleveland or barque Maria Martin, and the ownership of said vessels as alleged in the pleadings in the case Northern Transportation Company of Ohio vs. the barque Maria Martin aforesaid is hereby admitted.

SPALDING & DICKMAN,
Proctors for Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

193 *Appraisement waived.*

APRIL 30, 1867.—This day came the parties by their counsel, and waived the appraisement of said barque Maria Martin, and by consent the value of said barque and the freight pending is valued at forty-two thousand five hundred dollars; and came John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as claimants of said barque Maria Martin, her boats, tackle, apparel, and furniture, and presented their stipulation in the said sum of forty-two thousand five hundred dollars, with Albert M. Harman as surety, conditioned "that they shall abide and answer the decree of the court in this cause and of the appellate court, in case of appeal," which is as follows:

Stipulation on release.

District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the 12th day of November, A. D. 1866, by the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza A. Cogswell, against the barque Maria Martin, her boats, tackle, apparel, and furniture:

And whereas an intervening libel was filed on the 23d day of November, A. D. 1866, by William Phelps, Orren Staples, and William H. Brace against said barque Maria Martin, &c.:

And whereas also an intervening libel was filed on the 4th day of December, A. D. 1866, by the Merchants' Insurance Company against said barque:

And whereas the said barque Maria Martin, her boats, tackle, apparel, and furniture, is in the custody of the marshal under the process issued in pursuance of the prayers of said libel, as appears from said process now on file in said court:

Appearing personally John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as the claimants of the said barque Maria Martin, her boats, &c., and produced for surety Albert M. Harmon;
194 and the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-two thousand and five hundred dollars unto the said several libellants, that the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon shall abide and answer the decree of the said court in each of the aforesaid causes and of the appellate court upon appeal; and unless they shall so do, they do hereby severally consent that execution may issue forth against them, their heirs, executors, administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.
DAVID TROTTER.

Taken and acknowledged this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S. Commissioner Northern District of Ohio.

NORTHERN DISTRICT OF OHIO, *ss:*

John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, & Albert M. Harmon, parties to the above stipulation, being duly sworn, depose and say that they are worth the sum of one hundred and fifty thousand dollars over and above all their just debts and liabilities.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.

Sworn to this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S. Commissioner Northern District of Ohio.

Order for warrant of restutition.

Whereupon, and by consent, it is ordered by the court that a warrant of restitution be issued to restore said barque Maria Martin, &c., to said claimants.

Warrant of restitution issued as follows:

195 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-six, by the Merchants' Insurance Company against the barque Maria Martin, her boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellant; and whereas the said barque Maria Martin, her boats, &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also a claim has been interposed and filed in said court by John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, and such proceedings have been thereupon had, that by the sentence and decree of said court in this cause, made and pronounced on the thirtieth day of April, eighteen hundred and sixty-seven, the said barque Maria Martin, her boats, &c., was adjudged to belong as claimed, and was ordered to be restored to the said claimant:

Therefore you, the said marshal, are hereby commanded to release the said barque Maria Martin, her boats, &c., from arrest, and to deliver and return the same unto the said John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of these United States the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

196 *Return.*

In obedience to the within warrant of restutition, I have, this 30th day of April, A. D. 1867, released the barque Maria Martin, her boats, tackle, apparel, and furniture, from arrest, as commanded.

Service, $2 00.

CASSIUS FAIRCHILD,
U. S. Marshal.

197 And now, at this same term, to wit, April term, 1867, and on the nineteenth day thereof, to wit, on the sixth day of May, A. D. 1867, the following proceedings were had, to wit:

Decree.

MERCHANTS' INSURANCE COMPANY
vs.
THE BARQUE MARIA MARTIN, HER BOATS, TACKLE, apparel, and furniture. } In admiralty.

This day came the parties, by their proctors, and on consideration of the pleadings and proofs, and the arguments of counsel thereon, it is

ordered, adjudged, and decreed by the court that this libel be, and is hereby, dismissed at the costs of the libellant, taxed at sixty-one dollars and forty-six cents, and on failure to pay said costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Decree signed, recorded, & enrolled May 6th, 1867.

J. M. MILLER, *Clerk.*

Appeal.

And same day came said libellants in open court and prayed an appeal to the circuit court of the United States for the district of Wisconsin.

Appeal allowed.

Whereupon it is ordered by the court that the said appeal be, and is hereby, allowed, and that said libellant file an additional stipulation for costs in the sum of two hundred and fifty dollars within ten days.

MAY 8, 1867.—This day came the libellant and filed a stipulation, with B. K. Miller as surety in the penalty of two hundred and fifty dollars, conditioned to pay all damages and costs as may be awarded against it.

Appeal bond.

Circuit court of [of] the United States for the district of Wisconsin.—In admiralty.

Whereas an appeal has been taken to this court from the dis-
198 trict court of the United States in the district of Wisconsin, in a certain cause wherein the Merchants' Insurance Company was libellant against the barque Maria Martin, her boats, tackle, apparel, and furniture—John Martin, Thomas Quayle, Daniel Trotter, and Ralph H. Harmon, respondents—by the said libellant, and the said libellant have been ordered to give security by the stipulation of competent sureties in the sum of two hundred & fifty dollars, ($250,) for the payment of all damages and costs on the appeal in this court and in the Supreme Court:

Now, therefore, the stipulator undersigned hereby stipulate in the said sum of two hundred & fifty dollars, ($200,) to pay all damages and costs on the appeal in this court, and in the Supreme Court in case such case shall intervene.

B. K. MILLER.
H. M. FINCH.

Taken and acknowledged this 8th day of May, 1867, before me.

J. M. MILLER, *Clerk.*

DISTRICT OF WISCONSIN, *ss:*

B. K. Miller, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of two hundred & fifty dollars over and above all his just debts and liabilities.

B. K. MILLER.

Sworn to this 8th day of May, 1867, before me.

J. M. MILLER,
Clerk U. S. Dist. Court, Wisconsin.

Stipulation approved.

MAY 8, 1867.—This stipulation approved and appeal allowed.

A. G. MILLER, *Judge.*

Clerk's certificate.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office.

199 In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the 92nd.

[SEAL.] J. M. MILLER, *Clerk.*

Filed July 29th, 1867.

End of district court record.

SEPTEMBER 11, 1867.—This day came the appellants, by their counsel, and moved the court, on affidavit filed, for a continuance of this cause. On consideration whereof it is ordered by the court that said motion be and hereby is overruled.

SEPTEMBER 16TH, 1867.—Stipulation of the parties in writing filed as follows:

Stipulation as to testimony, &c.

In the circuit court of the United States, September term, A. D. 1867.

NORTHERN TRANSPORTATION CO. *vs.* BARQUE MARIA MARTIN. } Appeal in admiralty.

MERCHANTS' INSURANCE CO. *vs.* IBID. } Do.

WILLIAM PHELPS *vs.* IBID. } Do.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

It is stipulated by the counsel of the respective parties, with the assent of the court, that these causes shall be heard in the circuit court upon the testimony submitted in the court below, to the right expressly reserved to the libellants of hereafter making proof of the damage by them sustained, and to the respondents to make proof as to the same subject, or as to the damage by them sustained, in such manner as this court shall direct, so that the same shall form a part of the record

200 as fully as if given in at the trial, but so that the respondents may have appeal in the cases in which all questions can be raised as to damages or otherwise, not waiving the right to take further evidence in the appellate court.

Sept., 1867.

FINCHES, LYNDE & MILLER,
For Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

Hearing.

SEPTEMBER 16, 1867.—This day came the parties, by their counsel—Messrs. Van Dyke, Newberry, and Hibbard appearing for the respondents, and Messrs. Finch and Spalding, for the libellant—and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this court, and, the hearing not being concluded, the further hearing was adjourned until to-morrow morning.

Hearing.

SEPTEMBER 17, 1867.—This day came the parties, by their counsel, and the further hearing of this cause was resumed before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and, being concluded, the same was held under advisement.

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868—present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit—on the fourteenth day of said term, to wit, on the twenty-ninth day of September, A. D. 1868, the following proceedings were had, to wit:

Order.

THE MERCHANTS' INSURANCE COMPANY
vs.
201 THE BARQUE MARIA MARTIN—JOHN Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants. } In admiralty.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the decree of the district court herein dismissing the libel be reversed, the circuit court being of opinion that both vessels were in fault; and it is ordered that it be referred to John M. Miller, a commissioner, to take further testimony, in accordance with the stipulation of both parties in this cause, and report the amount of damages sustained by the libellant with all convenient speed.

D. DAVIS.

Order of consolidation.

FEBRUARY 2, 1869.—This day came the parties, by their counsel, and in pursuance of their stipulation in writing filed in the case of the Northern Transportation Co. of Ohio and others against the barque Maria (Chan. B, 384) it is ordered by the court that this cause be consolidated with said last-mentioned cause.

And the record in said cause of William Phelps et als. vs. the barque Maria Martin, her boats, &c., consolidated with the foregoing cases, is as follows, to wit:

Be it remembered that heretofore, to wit, on the 29th day of July, A. D. 1867, a certified copy of record in the case of William Phelps et als. vs. the barque Maria Martin, her boats, &c., was received from the clerk of the district court of the United States for the district of Wisconsin, and filed as follows, to wit:

District court of the United States of America for the district of Wisconsin.

202 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the eighth day) of April, A. D. 1867—present, the Honorable Andrew G. Miller, judge of said court, presiding; Cassius Fairchild, marshal; John M. Miller, clerk—among other, the following proceedings were had, to wit:

WILLIAM PHELPS, ORRIN STAPLES, & WILLIAM H. BRACE, libellants,
vs.
THE BARQUE MARIA MARTIN, HER BOATS, &c.—John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants.
} In admiralty.

Be it remembered that heretofore, to wit, on the twenty-third day of November, A. D. 1866, came the above-named libellants, by their proctors, Messrs. Spalding & Dickman, and Messrs. Finches, Lynde & Miller, and filed their intervening libel against the barque Maria Martin, her boats, tackle, apparel, and furniture, as follows:

Libel.

To the Honorable Andrew G. Miller, judge of the district court of the United States within and for the district of Wisconsin:

William Phelps, Orrin Staples, & William H. Brace, of Detroit, in the State of Michigan, copartners under the firm of W. Phelps & Company, exhibit this their libel against the barque "Maria Martin," (whereof David Trotter is, or lately was, master,) now being in the custody of the marshal of the district aforesaid, under arrest in virtue of a warrant issued out of this honorable court at the suit of the Northern Transportation Company of Ohio; the Buckeye Mutual Insurance Company of Cleveland, Ohio; N. D. Hunter, of Chicago, in the State of Illi-

203 nois; Charles J. Hill, of Gloversville, in the State of New York; George C. Reed, of said Detroit; Joseph Cogswell, and Eliza A. Cogswell, his wife, of Akron, in said State of Ohio; her boats, tackle, apparel, and furniture, and against all other persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the said William Phelps, Orrin Staples, & William H. Brace, libellants, do allege and articulately propound as follows, to wit:

First. That before and at the time of the collision hereinafter mentioned, the steam-propeller "Cleveland" hereinafter mentioned, and the said barque Maria Martin, were vessels, each of them, of more than twenty tons burthen, and enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting the said lakes, within the true intent and meaning of the act of Congress, and that the said barque Maria Martin now is of said tonnage, and so enrolled, licensed, and employed.

Second. That on or about the eighteenth day of June, A. D. 1866, the said propeller Cleveland, with one William H. Williams as her master, departedf rom the port of Ogdensburgh, in the State of New York, bound for the port of Chicago, in the State of Illinois, and having on board a valuable cargo of sugar and other goods, wares, and merchandize, and about fifty passengers. That the said propeller was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackle, apparelled, and appointed, and during all the times herein mentioned had a full complement of competent officers and crew, and was in every respect fit for the voyage she was about to undertake. That said propeller proceeded on her voyage safely and without accident until about or soon after two o'clock a. m. on the
204 morning of the twenty-second day of June, A. D. 1866, when shortly after passing Bar Point on the Canada shore and hauling upon her course for the entrance of the Detroit River, the said propeller being on a northerly course, made a tug with a tow coming down on a southerly course, which afterwards proved to be the tug "George B. McClellan," having in tow by a stern-line the said barque Maria Martin. That soon afterwards the said tug, being right ahead of said propeller, gave one blast of the whistle, which was answered with one blast of the whistle by said propeller, whereupon the said propeller instantly put her wheel aport, became steady on her course, and was going all clear and passed to the right, the said tug and the Maria Martin respectively showing at that time their red light to the said propeller. That when said propeller, with her wheel aport as aforesaid, came abreast of said tug and distant a hundred feet and upwards from her, it was discovered on board said propeller that the Maria Martin had shut out her red light from the view of said propeller. Whereupon the wheel of said propeller was at once put hard aport, and said propeller swung off towards the Canada shore. That the said propeller Cleveland then discovered the said barque Maria Martin's green light not more than fifty feet off, the said barque heading partly towards the Canada shore and with her jib-boom almost into said propeller's port bow, and immediately thereafter, notwithstanding the engine of said propeller was stopped, and every other effort made by her officers and crew to avoid a collision, the Maria Martin ran into and afoul of said propeller, her jib-boom striking the propeller's foremast and throwing the propeller's mate overboard from the top of the pilot-house, her bow striking the propeller on her port side a little forward of amidships and cutting down the propeller below the wa-

ter-line, and otherwise so greatly damaging and injuring her that she began to fill with water, and in spite of the most strenuous exer-
205 tions of all on board of said propeller to keep her afloat, she, with all her cargo, in about ten minutes after said collision, was completely sunken and submerged in five fathoms water near the mouth of the Detroit River, whereby the greater portion of said cargo was totally lost, and the owners of said propeller were compelled to abandon her as she lay as and for a total loss, the passengers on board said propeller having with difficulty saved their lives by getting aboard the Maria Martin.

Third. That the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of the said Maria Martin, her master, officers, and crew, and not from any fault, omission, or neglect on the part of the said propeller, her master, officers and crew. That the Maria Martin, as the libellants are informed and believe, had not before or at the time of said collision a proper look-out and watch to guard against the danger of a collision, and her officers and crew were not then at their proper places and attentive to their duties. That when said tug gave one blast of the whistle as aforesaid, it was the duty of the Maria Martin instantly to put her helm to port and to pass to the right, which she neglected to do. That she should not (as she did) have departed from the course which care, and prudence, and good seamanship required her to follow, as a vessel in tow. That the said propeller, from the time she first made the said tug with a tow as aforesaid, resorted to all the means to which she could with propriety resort to keep out of their way. That at and before the time of said collision, the said propeller had competent and sufficient officers and crew at their proper places and attentive to their duties, keeping watch and ward for her safe management, and had a proper look-out, properly stationed, and vigilantly employed in guarding against the danger of a collision, and had proper signal-lights, as required by law, properly displayed and brightly burning; and that by reason of the negligence, inattention, and want of proper care, caution, and skill on the part
206 of the master, officers, and crew of the said Maria Martin, these intervening libellants have sustained the damages hereinafter mentioned.

Fourth. That at the time of said collision these libellants were the owners of a large quantity of fish and oranges of great value, which were then on board said propeller and a part of her cargo for said voyage. That by reason of said collision, and the careless, negligent, & improper management of the said barque Maria Martin, a portion of said fish and oranges, of the value of seven hundred and seventy-two and $\frac{70}{100}$ dollars, was totally lost and destroyed. That on the remainder of said fish and oranges belonging as aforesaid to these libellants, on board said propeller and saved in a damaged condition, these libellants have been compelled to pay as a general average contribution towards salvage expenses incurred in raising said propeller and her cargo the sum of seventy-four and $\frac{06}{100}$ dollars. Wherefore these libellants, by said collision, and the careless, negligent, and improper management of the said barque Maria Martin, have sustained damages to the amount of eight hundred and forty-six and $\frac{76}{100}$ dollars, for which they herein claim reparation.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore these libellants pray that process of monition may issue to the marshal of the district aforesaid, commanding him to cite and admonish all persons having, or pretending to have, any right, title, or in-

terest in the said barque Maria Martin, her boats, tackle, apparel, or furniture to appear before this honorable court on such day, to be inserted in the said monition as the court shall direct, to answer the libellants in the premises according to the course of courts of admiralty and the rules and practice of this honorable court in civil causes of admiralty and maritime jurisdiction, and also that a warrant of arrest in due form of law may issue to the said marshal against the said barque, boats, tackle, apparel, & furniture, and that this honorable court will pronounce for the libellants' aforesaid demand, and decree the same to be paid with costs.

WILLIAM PHELPS,
ORRIN STAPLES,
WILLIAM H. BRACE,
By SPALDING & DICKMAN, &
FINCHES, LYNDE & MILLER,
Proctors.

SPALDING & DICKMAN,
FINCHES, LYNDE & MILLER,
Proctors for Libellants.

And same day said libellants filed their stipulation as follows:

207 *Libellants' stipulation.*

District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the 23rd day of November, in the year of our Lord one thousand eight hundred and sixty-six, by William Phelps, Orren Staples, and William H. Brace against the barque Maria Martin, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appellate court.

WM. P. LYNDE. [L. S.]
B. K. MILLER.

Taken and acknowledged this 23rd day of Nov'r, 1866, before me.
J. M. MILLER, *U. S. Commissioner.*

208 *Order for process and advertisement.*

Whereupon it is ordered by the court that process issue to the marshal, returnable on the third day of December next, at eleven o'clock in the forenoon, and that this court will on that day proceed to the trial & hearing thereof. And it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial for at least six days.

Whereupon a monition issued as follows:

209 *Monition.*

DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-six, by William Phelps, Orren Staples, & William H. Brace against the barque Maria Martin, her boats, tackle, apparel, & furniture, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said barque or vessel, her tackle, &c., may be cited in general and special to answer the premises, and, all proceedings being had, that the said barque or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said barque or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the third day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

SPALDING, & DICKMAN, &
FINCHES, LYNDE & MILLER,
Proctors for Libellants.

[50-cent U. S. int. stamp, canc'l'd.]

210 *Return.*

In obedience to the within precept, I have this 23rd day of November, A. D. 1866, attached the bark Maria Martin, her boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice by advertisement for six days in the Milwaukee Daily News, and by posting notices to all persons claiming the same, that this court will on the third day of December next, at eleven o'clock in the forenoon of that day, should the same be a jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

CASSIUS FAIRCHILD, *Marshal,*
By WM S. JACKSON, *Deputy.*

JANUARY 14TH, 1867.—This day came John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, claimants of said barque Maria Martin, &c., by Messrs. Emmons & Van Dyke, their proctors, and presented their stipulation, with Robert P. Fitzgerald and John B. Merrill as sureties, in the sum of two hundred and fifty dollars, conditioned that they shall abide and answer the decree of this court in this cause as to costs, which is as follows:

Claimants' stipulation.

211 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-six, by William Phelps, Orren Staples, & William H. Brace against the barque Maria Martin, her boats, &c., for the reasons and causes in the said libel mentioned:

And whereas the said barque Maria Martin, her boats, &c., are in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from said monition, now on file in said court:

Appearing John Martin et als., by Emmons & Van Dyke, their proctors, in their libel filed as the claimant of the said barque Maria Martin, and produced for sureties Robert P. Fitzgerald & John B. Merrill, and the said John Martin et als., Robert P. Fitzgerald, & John B. Merrill, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred & fifty dollars, unto the said William Phelps, Orren Staples, & William H. Brace, that the said claimants & sureties shall abide and answer the decree of the said court in the aforesaid cause as to costs, and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN & OTHERS,
By EMMONS & VAN DYKE, *Proctors.*
ROBERT P. FITZGERALD.
JOHN B. MERRILL.

Taken and acknowledged this 14th day of January, 1867, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

Robert P. Fitzgerald & John B. Merrill, parties to the above stipulation, being duly sworn, depose and say that they are each worth the sum of two hundred & fifty dollars over and above all his just debts and liabilities.

ROBERT P. FITZGERALD.
JOHN B. MERRILL.

Sworn to this 14th day of January, 1867, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

212 And same day (January 14th, 1867) came said claimants, by their said proctors, and presented to the court their answer.

213 *Hearing, &c.*

APRIL 3RD, 1867.—This day came the parties, by their counsel—Messrs. Spalding & Dickman, Moore, & Finches, Lynde & Miller, for libellants; and Messrs. Newberry, Hibbard, and Emmons & Van Dyke, for respondents—and said respondents filed amendments to the answer as per stipulation filed, and said libellants filed their replication, and by consent the testimony of witnesses was taken in open court. And this cause came on to be heard upon the pleadings and proofs, and not being concluded it was adjourned until to-morrow morning.

And said stipulation as to answer is as follows:

Stipulation as to answer.

U. S. district court, district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY and others
vs.
THE BARQUE MARIA MARTIN, &c.

THE MERCHANTS' INSURANCE COMPANY of Chicago
vs.
THE SAME.

WILLIAM PHELPS & OTHERS
vs.
THE SAME.

It is hereby stipulated and consented that the amendments to the answers in these three cases respectively may be substituted for so much of the answers in these cases respectively (the amendments in each case being so substituted in the answer in the case the amendments purport to be in) as precedes the last two articles in the answers respectively, said last two articles being the ones in which limited liability under the act of 1851 is referred to, and the general allegations that all and singular the premises are true. The subsequent articles in the answers respectively may also be properly numbered. Said amendments are those which have been submitted to the undersigned.

April 1, 1867.

SPALDING & DICKMAN,
Proctors for Libellants.
FINCHES, LYNDE & MILLER,
Proctors for Libellants.

214 And said amended answer is as follows:

Amended answer.

In the district court of the United States within and for the district of Wisconsin.—In admiralty.

To the Honorable Andrew G. Miller, district judge, &c:

The claim and answer of John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, respondents, to the libel of William Phelps, Orren Staples, and William H. Brace against the barque Maria Martin, her tackle, apparel, &c.

And hereupon the said respondents answer and allege as follows:

First. That the said respondents are, and at the time of filing said libel and of the collision therein mentioned were, the sole, true, and bona-fide owners of the barque Maria Martin in said libel mentioned, her tackle, apparel, and furniture, and that no other person is owner thereof.

Second. The said respondents admit the allegations of the first article of said libel to be true.

Third. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the second article of the said libel stated, or of any of the allegations in the said second article contained and not hereinafter specifically admitted, except such as is derived from hearsay or the said libel. The said respondents deny each and every allegation in said second article of the said libel contained, except such as are hereinafter specifically alleged or admitted to be true, and say that many of the matters in said second article are untruly alleged and pleaded, and they demand strict proof of each and every allegation in the second article contained, except such as are hereinafter specifically admitted to be true. The said respondents admit and allege that in the morning of the 22nd day of June, 1866, and after one
215 o'clock in the said morning, but before it was light, the said barque, she being then tight, staunch, well officered, manned, equipped, and provided, and laden with a cargo of grain, with David Trotter for her master, was on the Detroit River, below Bois Blanc Island, bound on a voyage in the pursuit of her aforesaid business, from Chicago, in the State of Illinois, to Buffalo, in the State of New York; that the wind was light from the westward, the night was clear and without fog, and the barque was proceeding at a moderate speed upon a southerly course in tow of the steam-tug George B. McClellan, with a tow-line about three hundred feet long, and following the said tug according to the immemorial, general, and universally known custom and usage of the river, the said barque as to her course being according to said custom and usage under the control and direction of the tug; the tug and her owners having contracted to tow and take the said barque from a point in the St. Clair River to Lake Erie, and the said tug being engaged in the performance of the said contract. That the barque then carried and displayed good and proper signal-lights as provided by law, having on the starboard side a green light and on the port side a red light, and had good and proper watch and look-out. That, while the barque was so proceeding, the propeller Cleveland was in the river bound up the river and upon a northerly course, and was so proceeding up the river very fast and at an immoderate and improper rate of speed. That a short time (but how long the respondents are unable to state) before the collision herein mentioned happened, and while the barque was so proceeding and the tug and barque were in their proper places in the river, lights of the propeller Cleveland were made from the barque ahead or nearly ahead of the tug, the tug then being ahead of the barque. The tug blew a single whistle twice, with a proper interval, to show that the two blasts were not connected, and ported her helm, and the barque ported her helm and put her helm hard aport, and both swung to starboard, the tug, being the smaller vessel and with much the smaller draft of water, swinging more rapidly than the
216 barque. That at the time when the helm of the tug and barque were ported the tug and barque were both in their proper places in the channel and in the river, and both swung, and from thence down to the time of the collision continued to swing, to starboard. That the

propeller did not slacken her speed, but proceeded at an immoderate, improper, and fast rate of speed, approached the tug upon a course which brought her too near the said tug; passed the tug too near and very close to her, and so proceeded that before the collision her bow bore a little off the barque's starboard bow, and a very short time before the collision the propeller put her wheel aport and threw her bow across the bows of the barque, and the barque and the propeller came in collision striking their port bows together; that soon after the collision the propeller sank; that the collision happened entirely without any fault, negligence, carelessness, or unskilfulness on the part of the barque or any of her officers, crew, servants, or agents, or any of the servants or agents of her owners, and by means and in consequence of the fault, negligence, want of vigilance, carelessness, and unskillfulness of the propeller Cleveland, her officers and crew, and, among other things, for the reason that the said propeller Cleveland was proceeding, and down to and at the time of collision proceeded, at an immoderate and improper fast rate of speed; that she did not slacken her speed; that she approached the said tug and the said barque upon a course which would and did bring her too near the same, and passed the said tug too near the same; that she did not take or keep her proper course and place in the channel, but on the contrary thereof went too far to the westward; that she did not change her course or take the proper steps so as to keep out of the way of and not collide with said barque, and was in other respects in fault.

Fourth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the third article of the said libel stated, or of any of the allegations in the said third
217 article contained, and not in this answer specifically alleged or admitted to be true, except such as is derived from hearsay or the said libel. The said respondents deny each and every allegation in said third article contained, except such as are so admitted to be true, and they demand strict proof of each and every allegation in the said third article contained not so specifically admitted to be true.

Fifth. The said respondents say that they have not any knowledge, information, or belief of any of the matters in the fourth article of the said libel stated, or of any of the allegations in the said fourth article contained, except such as is derived from the said libel, and they therefore deny each and every allegation in the said fourth article contained, and demand strict proof thereof.

Sixth. The said respondents deny that all or singular the premises in said libel are true.

Seventh. And the said respondents, further answering, allege that the said barque, during and at each and all the times in the said libel mentioned, was a ship and vessel of the United States, of the burthen of twenty tons and upwards, duly enrolled and licensed for and employed in the coasting trade of the United States, as is hereinbefore admitted, and at the time of said collision was engaged in the performance of a voyage, and the carriage of a cargo, from Chicago to Buffalo, as is hereinbefore stated, with freight then pending, payable on the delivery of her cargo, but not then earned; that she then was not, and is not, a canal-boat, barge, or lighter, or used in rivers or inland navigation; that at the time of the happening of the said collision, and just before the same happened, the value of the said barque was, as near as the said respondents can state, and as they allege the same, forty thousand dollars; and that her freight then pending as aforesaid was, as near as the said respondents can state, and as they allege the same four
218 thousand four hundred & eight $\frac{56}{100}$ dollars; that by the collision

herein mentioned (which is the same collision in said libel referred to) several owners of property suffered loss, damage, and injury to property owned by them, respectively, (but who, or to what kind of property, or to what precise extent, the said respondents are unable to state,) greater than the value of the said barque and her freight then pending; that the said collision, and each and all the alleged losses and damages in said libel referred to, (if any such losses or damages happened or were ever done, occasioned, or incurred, the respondents as aforesaid deny,) happened, were done, occasioned, and incurred without the design, neglect, privity, or knowledge of the respondents, and that therefore, and pursuant to the act of Congress of the United States entitled "An act to limit the liability of ship-owners, and for other purposes," approved March 3, 1851, the said libellants cannot, nor can any of them, in any event, (and the said respondents expressly deny that they or either of them can recover or have decree for any amount,) recover or have decree for any greater or larger sum than a proportion of the value of the said barque, which shall bear the same proportion to the whole value thereof as the amount of their respective losses and damages, for which they respectively may (if they have, or either of them has, such right) have the right to recover or have decree, bears to the whole loss and damages done, occasioned, or incurred by the said collision. And the said respondents pray that they may have the same benefit and advantage of the matters stated and referred to in this seventh article of this answer as though they plead the same otherwise, or were able to plead, and did plead, the same more fully and particularly, and allege that they have pleaded the same as fully and particularly as they are able to do.

Eighth. That all and singular the premises are true.

And hereupon the said respondents pray that the said libel
219 may be dismissed with costs, and that the said respondents may have such other and further or other relief or decree in the premises as may be meet.

JOHN MARTIN,
THOMAS QUAYLE,
DAVID TROTTER,
RALPH H. HARMON,
By GEO. WILLEY,
Their Ag't & Proctor.

GEORGE B. HIBBARD,
WILLEY & CARY, &
EMMONS & VAN DYKE,
Proctors for Respondents.

NORTHERN DISTRICT OF OHIO, *City of Cleveland, ss:*

Ralph H. Harmon, respondent, being duly sworn, deposes and says that he resides in the city of Cleveland, in the northern district of Ohio; that he is one of the respondents named in the foregoing answer; that he knows as much of the matters therein stated or referred to as the others of the said respondents; that he has read the foregoing answer, and knows the contents thereof; and that the same, and the matters therein stated, are true according to the best of his knowledge, information, and belief.

R. H. HARMON.

Subscribed and sworn to before me, the clerk of the United States district court for the northern district of Ohio, in said district, this thirty-first day of December, 1866.

In witness whereof I, the said clerk, have hereunto subscribed my name officially, and affixed the seal of said court the day and year last above stated.

FR. GREEN, *Clerk.*

And said replication is as follows:

Replication.

U. S. district court, district of Wisconsin.

WILLIAM PHELPS, ORREN STAPLES, & WILLIAM H. Brace
vs.
THE BARQUE MARIA MARTIN.

The replication of William Phelps, Orren Staples, and William H. Brace to the answer of John Martin, Thomas Quayle, David
220 Trotter, & Ralph H. Harmon, respondents, allege that they, the said libellants, will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the said answer of the said respondents is uncertain, untrue, and insufficient; and they humbly pray as in and by their said libel they have already prayed.

SPALDING & DICKMAN, &
FINCHES, LYNDE & MILLER,
Proctors for Libellants.

Hearing cont'd.

APRIL 4TH, 1867.—This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

APRIL 5TH, 1867.—This day came the parties, by their counsel, and the hearing of this cause was resumed, and not being concluded it was adjourned until to-morrow morning.

Held under consideration.

APRIL 6TH, 1867.—This day came the parties, by their counsel, and the hearing of this cause was concluded, and the court not being sufficiently advised held the same under consideration.

Stipulation filed.

APRIL 9, 1867.—This day came Mr. Dickman, proctor for libellants, and Mr. Van Dyke, proctor for respondents, and filed the testimony taken in court by short-hand reporter, and same day filed stipulation as follows:

Stipulation.

United States district court, district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY of Ohio.
vs.
THE BARQUE MARIA MARTIN.

THE MERCHANTS' INSURANCE COMPANY
vs.
THE SAME.

WILLIAM PHELPS ET AL.
vs.
THE SAME.

It is hereby stipulated and agreed that the testimony taken in behalf of said libellants and respondents (at the hearing of said cases in
221 April, 1867, in Milwaukee, before Judge A. G. Miller) in shorthand, and afterwards written out in full by the reporter, and revised by Messrs. Van Dyke, Lynde and Dickman, shall be deemed and treated as testimony regularly taken before a U. S. commissioner, signed by the witnesses, and taken according to law, and shall be used as such in all stages of said cases, and no question is raised in said cases as to the ownership of the propeller Cleveland, or barque Maria Martin, and the ownership of said vessels as alleged in the pleadings in the case Northern Transportation Company of Ohio vs. the barque Martin Martin aforesaid is hereby admitted.

SPALDING & DICKMAN,
Proctors for Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

Appraisement waived.

APRIL 30TH, 1867.—This day came the parties, by their counsel, and waived the appraisement of said barque Maria Martin, and by consent the value of said barque, and the freight pending, is valued at forty-two thousand and five hundred dollars. And came John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as claimants of said barque Maria Martin, her boats, tackle, apparel, and furniture, and presented their stipulation in the said sum of forty-two thousand five hundred dollars, with Albert M. Harmon as surety, conditioned that they shall abide and answer the decree of this court in this cause, and of the appellate court in case of appeal, which is as follows:

Claimants' stipulation to release barque.

District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the 12th day of November, A. D. 1866, by the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, and Eliza A. Cogswell against the barque Maria Martin, her boats, tackle, apparel, and furniture:

And whereas and intervening libel was filed on the 23d day
222 of November, A. D. 1866, by William Phelps, Orren Staples, and William H. Brace, against said barque Maria Martin, &c:

And whereas also an intervening libel was filed on the 4th day of December, A. D. 1866, by the Merchants' Insurance Company against said barque:

And whereas the said barque Maria Martin, her boats, tackle, apparel, and furniture, is in the custody of the marshal, under the process

issued in pursuance of the prayers of said libel, as appears from said process now on file in said court:

Appearing personally, John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, as the claimants of the said barque Maria Martin, her boats, &c., and produced for surety Albert M. Harmon; and the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-two thousand and five hundred dollars, unto the said several libellants, that the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon shall abide and answer the decree of the said court in each of the aforesaid causes, and of the appellate court, upon appeal. And unless they shall so do, they do hereby severally consent that execution may issue forth against them, their heirs, executors, administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.
DAVID TROTTER.

Taken and acknowledged this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S Commissioner Northern District of Ohio.

NORTHERN DISTRICT OF OHIO, *ss:*

John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, & Albert M. Harmon, parties to the above stipulation, being duly sworn, depose and say that they are worth the sum of one hundred and fifty thousand dollars over and above all their just debts and liabilties.

JOHN MARTIN.
THOMAS QUAYLE.
RALPH H. HARMON.
A. M. HARMON.

Sworn to this 27th day of April, A. D. 1867, before me.

JA'S D. CLEVELAND,
U. S. Commissioner Northern District of Ohio.

Order for warrant of restitution.

223 Whereupon, and by consent, it is ordered by the court, that a warrant of restitution be issued to restore said barque Maria Martin, &c., to said claimants.

Warrant of restitution issued as follows:

DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting.

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-six,

by William Phelps, Orren Staples, and W'm H. Brace against the barque Maria Martin, her boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellant:

And whereas the said barque Maria Martin, her boats, &c., has been attached by the process of the said court, in pursuance of the prayer of the libel, and is now in your custody in virtue of said process:

And whereas also a claim has been interposed and filed in said court by John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, and such proceedings have been thereupon had, that by the sentence and decree of said court in this cause, made and pronounced on the thirtieth day of April, eighteen hundred and sixty-seven, the said barque Maria Martin, her boats, &c., was adjudged to belong as claimed, and was ordered to be restored to the said claimant:

Therefore you, the said marshal, are hereby commanded to release the said barque Maria Martin, her boats, &c., from arrest, and to deliver and return the same unto the said John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of these United States the ninety-first.

[U. S. D. C'T SEAL.] J. M. MILLER, *Clerk.*

224 *Return.*

In obedience to the within warrant of restitution, I have this 30th day of April, A. D. 1867, released the barque Maria Martin from arrest, as commanded.

Service, $2 00.

CASSIUS FAIRCHILD,
U. S. Marshal.

225 And now at the same term, to wit, April term, 1867, and on the nineteenth day thereof, to wit, on the sixth day of May, A. D. 1867, the following proceedings were had, to wit:

Decree.

WILLIAM PHELPS, ORREN STAPLES, & WILLIAM H. BRACE *vs.* THE BARQUE MARIA MARTIN, HER BOATS, tackle, apparel, & furniture.	In admiralty.

This day came the parties, by their proctors, and on consideration of the pleadings and proofs, and the arguments of counsel thereon, it is ordered, adjudged, and decreed by the court that this libel be, and is hereby, dismissed at the costs of the libellants, taxed at sixty-three dollars and twenty-one cents; and on failure to pay the said costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Decree signed, recorded, & enrolled May 6th, A. D. 1867.

J. M. MILLER, *Clerk.*

Appeal.

And same day came said libellants in open court and prayed an appeal to the circuit court of the United States for the district of Wisconsin.

Appeal allowed.

Whereupon it is ordered by the court that the said appeal be, and is hereby, allowed, and that said libellants file an additional stipulation for costs in the sum of two hundred and fifty dollars within ten days.

MAY 8, 1867.—This day came the libellants and filed a stipulation, with O. J. Hale as surety, in the penalty of two hundred and fifty dollars, conditioned to pay all damages and costs as may be awarded against them; and said stipulation on appeal is as follows:

Appeal bond.

Circuit court of the United States for the district of Wisconsin.—In admiralty.

226 Whereas an appeal has been taken to this court from the district court of the United States in the district of Wisconsin, in a certain cause wherein William Phelps, Orren Staples, and William H. Brace was libellant against the barque Maria Martin, her boats, tackle, apparel, and furniture, John Martin, Thomas Quayle, David Trotter, and Ralph H. Harmon, respondents, by the said libellants, and the said libellants have been ordered to give security, by the stipulation of competent sureties, in the sum of two hundred & fifty dollars, ($250,) for the payment of all damages & costs on the appeal in this court and in the Supreme Court:

Now, therefore, the stipulator undersigned hereby stipulate in the said sum of two hundred & fifty dollars, ($250,) to pay all damages and costs on the appeal in this court, and in the Supreme Court, in case such appeal shall intervene.

O. J. HALE.

Taken & acknowledged this 8th day of May, 1867, before me.
J. M. MILLER, *Clerk.*

DISTRICT OF WISCONSIN, *ss:*

O. J. Hale, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of two hundred and fifty ($250) over and above all his just debts & liabilities.

O. J. HALE.

Sworn to this 8th day of May, 1867, before me.
J. M. MILLER, *Clerk.*

Stipulation approved.

MAY 8, 1867.—This stipulation is appointed and appeal allowed.
A. G. MILLER, *Judge.*

Clerk U. S. dis't ct certificate.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom,
227 now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the 92nd.

[U. S. D. C. SEAL.] J. M. MILLER, *Clerk.*

Filed July 29th, 1867.

End of district court record.

SEPTEMBER 11, 1867.—This day came the appellants, by their counsel, and moved the court, on affidavit filed, for a continuance of this cause; on consideration whereof, it is ordered by the court that said motion be, and hereby is, overruled.

SEPTEMBER 16TH, 1867.—Stipulation of the parties in writing filed, as follows:

In the circuit court of the United States.—September term, A. D. 1867.

NORTHERN TRANSPORTATION CO. *vs.* BARQUE MARIA MARTIN.	Appeal in admiralty.
MERCHANTS' INSURANCE CO. *vs.* IBID.	Do.
WILLIAM PHELPS *vs.* IBID.	Do.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

It is stipulated by the counsel of the respective parties, with the assent of the court, that these causes shall be heard in the circuit court upon the testimony submitted in the court below, to the right expressly reserved to the libellants of hereafter making proof of the damage by them sustained, and to the respondents to make proof as to the same
228 subject or as to the damage by them sustained in such manner as this court shall direct, so that the same shall form a part of the record as fully as if given in at the trial, but so that the respondents may have appeal in the cases in which all questions can be raised as to damages or otherwise, not waiving the right to take further evidence in the appellate court.

Sept., 1867.

FINCHES, LYNDE & MILLER,
For Libellants.

EMMONS & VAN DYKE,
Proctors for Respondents.

Hearing.

SEPTEMBER 16TH, 1867.—This day came the parties by their counsel—Messrs. Van Dyke, Newberry and Hibbard appearing for the respondents, and Messrs. Finch and Spalding, for the libellants—and this cause came on to be heard before the honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this court, and the hearing not being concluded, the further hearing was adjourned until to-morrow morning.

Hearing.

SEPTEMBER 17TH, 1867.—This day came the parties, by their counsel, and the further hearing of this cause was resumed before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and being concluded the same was held under advisement.

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868—present and presiding the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit—on the fourteenth day of said term, to wit, on the twenty-ninth day of September, A. D. 1868, the following proceedings were had, to wit:

229 *Decree & order of reference.*

WILLIAM PHELPS, ORREN STAPLES, & WILLIAM H. BRACE
vs.
THE BARQUE MARIA MARTIN—JOHN MARTIN, Thomas Quayle, David Trotter, and Ralph H. Harmon, claimants.
} In admiralty.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the decree of the district court herein dismissing the libel be reversed, the circuit court being of opinion that both vessels were in fault; and it is ordered that it be referred to John M. Miller, a commissioner, to take further testimony in accordance with the stipulation of the parties in this cause, and report the amount of damages sustained by the libellant with all convenient speed.

D. DAVIS.

Order of consolidation.

FEBRUARY 2, 1869.—This day came the parties by their counsel, and in pursuance of their stipulation in writing filed in the case of the Northern Transportation Co. of Ohio and others against the barque Maria Martin, (Chan. B, page 384,) it is ordered by the court that this cause be consolidated with said last-mentioned cause.

End of record of W'm Phelps et als. vs. barque Maria Martin, &c.—John Martin et els., claimants.

And now, at this same term, to wit: February term, A. D. 1869, and on the second day thereof, to wit, on the second day of February, A. D. 1869, the following proceedings were had, to wit:

Final decree.

230	THE NORTHERN TRANSPORTATION CO. OF Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, Eliza A. Cogswell, William Phelps, Orrin Staples, William H. Brace, & the Merchants' Insurance Company *vs.* THE BARQUE MARIA MARTIN, HER BOATS, &c.—John Martin, Thomas Quayle, David Trotter, & Ralph H. Harmon, claimants.	Consolidated appeal in admiralty.

This day came the parties, by their advocates, and by consent and pursuant to their stipulation in writing, as herein filed and entered in the records of this cause, it is ordered, adjudged, and decreed by the court, that the said several libellants to have and recover of the stipulators, John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon, thirty-one thousand two hundred and forty-eight dollars, and in default of the payment of said sum an execution be issued against the said John Martin, Thomas Quayle, David Trotter, Ralph H. Harmon, and Albert M. Harmon for the same.

And it is further ordered, adjudged, and decreed that neither party recover costs of the other, but that each party pay their own costs to be taxed, and in default thereof, that an execution or executions be issued against the party so decreed to pay the same.

A. G. MILLER.

Decree signed, recorded, & enrolled February 2d, A. D. 1869.

EDWARD KURTZ, *Clerk.*

And same day (February 2nd, 1869) came the said John Martin, Thomas Quayle, David Trotter, and Ralph H. Harman, claimants, by their counsel, and in open court prayed an appeal to the Supreme Court of the United States as follows:

231 *Appeal in open court.*

The circuit court of the United States for the district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, Eliza A. Cogswell, William Phelps, Orren Staples, William H. Brace, and the Merchants' Insurance Company, libellants,

vs.

JOHN MARTIN, THOMAS QUAYLE, DAVID TROTTER, & Ralph H. Harman, respondents.

The above-named respondents, conceiving themselves aggrieved by the

final decree entered on this day of February, eighteen hundred and sixty-nine, in the above-entitled cause, do hereby, in open court, appeal therefrom to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record & proceedings in the cause, duly authenticated, may be sent to the said Supreme Court.

Dated February 2nd, 1869.

EMMONS & VAN DYKE,
Proctors for the Respondents.

Allowance of appeal.

The circuit court of the United States for the district of Wisconsin.—In admiralty.

THE NORTHERN TRANSPORTATION COMPANY of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, Eliza A. Cogswell, William Phelps, Orren Staples, William H. Brace, and the Merchants' Insurance Company

vs.

JOHN MARTIN, THOMAS QUAYLE, DAVID TROTTER, and Ralph H. Harman, claimants.

232 And now, at this same term, John Martin, Thomas Quayle, David Trotter, and Ralph H. Harman, the above-named claimants, after the final decree pronounced and entered in this cause, comes and shows to the court that the matter in dispute exceeds the sum of $2,000, and thereupon, in open court, claim an appeal from the said final decree to the Supreme Court of the United States, to be holden at Washington, on, &c., and the same is accordingly allowed.

And on this second day of February, one thousand eight hundred and sixty-nine, the said claimants filed in the office of the clerk of this court a bond, in addition to bond for delivery, in the penal sum of three thousand dollars, payable to the above-named libellants, with sureties approved by the Hon. Andrew G. Miller, the judge of the court, conditioned that they will prosecute their appeal to effect, and answer all damages and cost if they shall fail to make their appeal good.

By the court.

And same day (February 2nd, 1869) the claimants filed their "bond on appeal" as follows:

Bond on appeal.

Know all men by these presents that we, John Martin, Thomas Quayle, Ralph Harman, Albert M. Harman, and William H. Quayle, of Cleveland, in the State of Ohio, are held and firmly bound unto the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, Eliza A. Cogswell, William Phelps, Orren Staples, William H. Brace, and the Merchants' Insurance Company, in the penal sum of three thousand dollars, to be paid to the said obligees, their executors,

administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly
233 and severally, firmly by these presents, sealed with our seals and dated the second day of February, one thousand eight hundred and sixty-nine.

Whereas the above-bounden John Martin, Thomas Quayle, & Ralph H. Harman, with David Trotter, have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Wisconsin, bearing date the first day of February, eighteen hundred and sixty-nine, in a cause in which the said The Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, Charles J. Hill, George C. Reed, Joseph Cogswell, Eliza A. Cogswell, William Phelps, Orrin Staples, William H. Brace, and the Merchants' Insurance Company, libellants, and the said John Martin, Thomas Quayle, David Trotter, and Ralph H. Harman were claimants of the barque "Maria Martin," her boats, tackle, apparel, and furniture, and respondents, and wherein a bond of the value of said barque, her boats, tackle, apparel, and furniture, is in the custody and control of the said circuit court:

Now, therefore, the condition of this obligation is such that, if the above-named appellants, John Martin, Thomas Quayle, David Trotter, and Ralph H. Harman, shall prosecute their appeal with effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN MARTIN. [SEAL.]
THOMAS QUAYLE. [SEAL.]
RALPH H. HARMAN. [SEAL.]
A. M. HARMAN. [SEAL.]
W'M H. QUAYLE. [SEAL.]

THE NORTHERN DISTRICT OF OHIO, *ss:*

On this second day of February, eighteen hundred and sixty-nine, personally appeared before me Albert M. Harman and William H. Quayle, two of the subscribers to the foregoing bond, who, being respectively sworn, says, each for himself, that he is a freeholder
234 within the State of Ohio, and is worth the sum of three thousand dollars over and above all debts and liabilities, in property not exempt from sale on execution.

Cleveland, O., Feb'y 2, 1869.

JA'S D. CLEVELAND,
U. S. Commissioner for said Northern District of Ohio.

FEB'Y 2, 1869.—Approved. By the court:

A. G. MILLER.

235 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a certified copy of the record & proceedings in the suit of the Northern Transp'n Co. et als. vs. the barque Maria Martin.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district of Wisconsin, this fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

(Indorsement on cover:) No. 266. John Martin, Thomas Quayle, David Trotter, and Ralph H. Harman, claimants of the barque Maria Martin, &c., appellants, vs. the Northern Transportation Company of Ohio, the Buckeye Mutual Insurance Company, N. D. Hunter, et al. Wisconsin C. C. U. S.

Filed 6th October, 1869.

Supreme Court of the United States.

JOHN MARTIN, RALPH H. HARMAN, AND OTHERS, *Appellants*,

vs.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO, THE BUCKEYE INSURANCE COMPANY, AND OTHERS.

Appeal from the Circuit Court of the United States for the District of Wisconsin.

BRIEF

ON THE PART OF THE APPELLANTS.

GEORGE B. HIBBARD, for the Appellants,

BUFFALO, N. Y.

WARREN, JOHNSON & Co., Printers, 197 Main Street, Buffalo, N. Y.

Supreme Court of the United States.

JOHN MARTIN, RALPH H. HARMON, and Others, Appellants,

vs.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO, THE BUCKEYE MUTUAL INSURANCE COMPANY, and Others.

Brief on the part of the Appellants.

GEORGE B. HIBBARD, *for Appellants, Buffalo, N. Y.*

This is an appeal from a decree of the Circuit Court of the United States for the District of Wisconsin, dividing the damages in a cause of collision, and decreeing that $31,248 be paid by the appellants. The District Court of that District dismissed the libel in the cause. This appeal is by the claimants in the original cause. The original libellants do not appeal.

Many of the facts in the case are undisputed.

The collision occurred about one or two o'clock in the morning of the 22d day of June, 1866, at the mouth of the Detroit River, between the barque Maria Martin and the steam propeller Cleveland. The Cleveland was sunk. The propeller was entering the river, and going on a course about north by east. (*See Record, pages* 20, 51.) She had changed her course to enter the river, and was steering for a light, as the captain and mate of the propeller swear. (51, 65.) The barque was a very large ves-

sel, about twice as large as the propeller, (63, 55, 78, 79, 112,) and was coming down the river, very heavily laden, (78, 100, 112,) in tow of the tug George B. McClellan. The barque was about two hundred feet long, and in breadth about thirty-eight feet, and of about nine hundred tons burden, (79, 112,) and drew about twelve feet of water. (78, 79, 113.) The tug was about one hundred feet long, with a breadth of about sixteen or eighteen feet, (37,) and she drew about nine feet of water. (37.) The length of the tow-line between the tug and the barque, including what was taken up for fastenings, was about two hundred and fifty feet. (79, 68, 21, 34.) The propeller was about one hundred and forty feet long, and of four hundred and sixty-one tons burden. (55, 63.) By the custom of the river vessels in tow, as the barque was, have nothing to do with the navigation of the river. As in this case was the fact, the tug determines the length of the line to be used, the course in the channel, the rate of speed—everything. The vessel in tow is completely powerless, and attempts to exercise no power or volition. (103, 79.) The tugs in the river have specified rates of charge for the performance of each contract of towage, (103.)

The collision happened in a part of the channel about three-quarters of a mile wide, (106, 109,) and actually took place away over on the westward side of the channel, (the proper place and side for the tug and barque to be,) and as far on that side as the tug and barque with safety could go, there being a shoal in that vicinity. (45, 108, 109, 28, 106, 102, 103.) There was a clear half mile of channel upon the propeller's side, where she could have gone without anything to prevent. (21, 45, 106, 108, 109.) The tug, thus descending the river, when the propeller was at some distance off, and the indications of

her lights were that she was running across the tug's course, and was crowding the tug clear over on the westward channel bank (*Point Third, III,*) whistled to the propeller, and changed her own course half a point, (26, 44,) and ran off on that divergent line. The barque, as it was her duty to do, ported to follow, but heavily laden as she was, with deep draught of water, under a port helm, would swing very much more slowly than the tug. (98.)

The propeller had been running for over a mile and a half across the course of the tug and barque. (*Point Third, III.*) She certainly came close to the tug before she changed her course at all, (*Point Third, III,*) and then only changed her course slightly, and about a point, to avoid her, (67, 61,) and when about one hundred and twenty-five feet from the tug, and she only about a point off the propeller's port bow, as the mate of the propeller swears, (71,) the propeller's wheel was *steadied, and afterwards starboarded.* (21, 23.)

The propeller did not make even the change she did make until warned to do so by the whistle of the tug. (21, 26, 44, 51, 66.)

The mouth of the river is a place where it is customary for vessels coming down the river in tow, as the barque was, and about entering Lake Erie, to make sail. (103.) Tugs make up and cast off their tows there, and the mouth of the river is one of the thoroughfares of the lake commerce. Upon this very night, as the propeller ran in, there were no less than eight vessels in the channel ahead of her—the tug, the barque, and the tug Muir, towing five vessels, (33,) the Muir's tow alone a quarter of a mile long. (88.)

The propeller entered this channel, and ran up among all these substantially powerless vessels, at her ordinary

speed, without slackening speed from the time she first made any of the vessels, to the collision. (69, 77, 78, 63.) Upon her own claim, she passed the tug on the port side, within only one hundred feet of her, though she really passed much nearer, (*Point Fifth*,) and does not pretend that the barque sheered until the propeller was abreast the tug, (when of course the barque could have been only about two hundred and fifty feet—the length of the tow line—off,) and yet seeks to make the barque liable, upon the claim that the barque sheered towards her after they were within this distance of each other—the barque powerless, and the propeller with a half mile of clear channel on her starboard hand! The naked statement of this aspect of the propeller's only claim, (and in no sense do the facts permit so strong a claim even to be made,) utterly condemns the propeller, under now familiar rule. (*Point Second.*)

There was a current in the river of about a mile and a half an hour. (103, 68.) The barque, in tow of the tug, and following right after her, according to the custom of the river, (81, 79, 92, 97, 103,) (and the propeller admits that the barque was following directly after the tug until the propeller was abreast of the tug; and is compelled to admit it, because, should the propeller claim the barque sheered before, then the propeller should have run off towards the Canadian shore long before she got abreast of the tug,) at a speed, through the water, (for the tug and barque were going with the current,) of about three and a half miles an hour—(103, 82)—a speed about half that of the propeller, which was running at her ordinary speed against the current, (69, 77, 78, 63, 64,) and passing the land, against the current, at a speed of about seven miles an hour, and through the water (as

her run up from Cleveland shows) of about nine miles an hour.

The vessels came in collision, the *port bow* of the barque striking the *port bow* of the propeller. (84, 94, 35, 36.)

The collision happened in the vicinity of a mile or a mile and a half below Bois Blanc Island. The place cannot be very accurately determined, especially as the vessels drifted with the current after the collision. (109, 104, 54, 55.)

The foregoing facts are entirely indisputable. Upon them alone, beneath rules most strongly settled since the decision of this case in the Circuit Court, the barque cannot be made liable for the collision.

The only fault that could be even attempted to be charged against the barque, the only fault to which allusion is made in the opinion delivered in the Circuit Court, is that the barque sheered—sheered after the propeller was abreast of the tug. Even if she did so sheer, under now well settled rules, she could not be charged with fault. But the appellants most confidently claim that accurate consideration of the case will compel the conclusion that (as was decided in the District Court) the barque did not sheer towards the propeller; that it *was a physical impossibility* that she *could so sheer and have the collision happen.*

The consideration of this question (and the case cannot be properly submitted without it) will require analysis of the testimony bearing upon the question.

1. The mate of the barque, who was upon deck, swears that the barque kept right after the tug until the tug (and she, according to the custom, had the control of every movement) put her helm aport, when the barque put her helm aport, and the barque swung, but swung

slowly, as she only could do, to starboard, and away from the propeller. These things he swears absolutely he saw. (83.)

2. The wheelsman of the barque—a most competent man—swears absolutely to the same thing. (97, 98.)

3. The second mate of the barque swears most positively to the same thing. (93.)

4. The captain is equally positive. (103.)

5. Mr. Hackett (who who was on board to settle a tow bill) confirms these statements most strongly.

6. The character and shape of the injury upon the Cleveland's side (112, *and see exhibit and model referred to*) show that the barque did not sheer. If she had, the break in the propeller's side would have been square across the propeller, for the vessels, had the barque sheered, must have come together at about right angles.

7. The sheer had to be made after the propeller passed the tug, (as the propeller claims,) one hundred feet off. There was only the length of a towline—about two hundred and fifty feet—for both to run at their combined speed, past the land, of about twelve miles an hour, before the collision. The proof shows the propeller swung rapidly to starboard after passing the tug—swung two and a half points to starboard; and the heavily loaded barque, the propeller claims, in running at most half the length of the towline—about one hundred and twenty-five feet—swung so as to run out into the stream one hundred feet, and all the distance the propeller ran in swinging to starboard, and struck the propeller then only at an angle of about one point and a half! (84, 103.) It is entirely impossible that such should have been the character of the injury if the barque had sheered; but,

8. It is beyond all question, as above appears, that

the barque could not have sheered and ran distance enough out into the stream to have had the collision happen, if, as the propeller claims, she passed the propeller one hundred feet off; and,

9. It is equally impossible that the barque could have sheered, when the *port bows* of the vessels came together.

10. Why should the barque put her wheel astarboard, sheer and run into the very path of destruction?

Against the most positive statements of the whole crew of the barque, and against three physical impossibilities, the propeller opposes, what?

She first opposes the testimony of Joseph Byron, the mate of the tug McClellan—the officer who was sailing her—who knows all about it; who, it is proved by the testimony of the master of the tug, was a "good sailor, a temperate, prudent, careful man." (38.)

Byron (their own witness, and who stood where he could best see) swears that barque, at the time of the collision, was only heading *a quarter of a point to the southward of the tug at the time of the collision.* (26, 27.) Just after the collision, upon the request of men interested in showing the tug free from blame, he signed a statement that the barque sheered off at right angles with the tug. This the propeller certainly cannot use to impeach her own witness. Byron swears he did not know what a right angle meant, (28,) and it will abundantly appear that it was absolutely impossible for the barque to have taken any such position. The mate of the tug knew the tug had changed her course; but what would the appearance of the vessels be to those who did not know that fact?

The answer to this question discloses the very vital

fact of the whole case, reconciles nearly all conflicting evidence, and shows how the collision happened.

Beyond question, the little, light, quick darting tug, under her port wheel, would shoot off quickly to starboard, much faster—"five times faster"—than the large, heavily loaded barque. (98.) *From the time of the tug's porting her half point down to the time of the collision, the tug would run upon a line (the barque swinging so slowly) of nearly a half point's divergence from the barque's actual course through the water. This divergence would bring the tug, at the time of the collision, actually about two points off the barque's starboard bow; for the barque, heavily laden and slowly swinging under her port helm, would sag down the stream, while the tug was running upon her half point divergent course off to starboard.*

Any one who knew that the tug had changed her course, as her mate did, would know that the appearance of things would be precisely as it was, although the barque had not sheered. To others, who did not know that the tug had changed her course, or who came suddenly upon the deck of the tug, the appearances would indicate that the barque had sheered. Witnesses who innocently swear that the barque sheered were ignorant that the tug had changed her course. They thought the barque had sheered from appearances. They were mistaken, as a man looking out of the window of a car thinks his train is in motion when it is the object upon which he looks; or thinks another train, actually stationary, is in motion when it is his own. It is the old error of the ignorant, that the sun moved and the earth stood still.

It would seem impossible, under all these considerations, that any attempt could be made to controvert matters so positively established. How feebly it is done actual examination will show.

The first witness on the part of the propeller after Byron, was Hunter, an engineer on the tug, who had been asleep, and who came confusedly on deck, and did not know whether the collision had then occurred or not. (29.) Such testimony is of very little value.

McGrath was another engineer on the tug. *He did not know the tug had changed her course.* He only swears that the barque was two or three points off on the port hand of the tug, precisely as she would appear without sheering, but sagging down the stream, while the tug ran off on a divergent line, as is above stated. (30, 31.) Such testimony, accurately considered, under absolute physical laws, in no sense tends to prove that the barque sheered.

McNeal was on the Monitor, further up the stream. He heard the cries of "hard aport," and came on the deck of his vessel at least partially confused. He only swears to appearances, entirely consistent with the fact, that the barque did not sheer, when it is kept in view that she sagged down the stream while the tug ran off to starboard. (33.)

Bell was on the Monitor, and testifies substantially the same as her master, McNeal, to appearances entirely consistent with the fact that the barque did not sheer, but sagged down the stream, only slowly obeying her port helm, while the tug ran on her diverging line of half a point. (33.)

Peter Young was on the tug; a very unintelligent man, as his testimony shows. He was no sailor. He had been a lookout on a propeller a little while, and had been about three seasons on tugs. At the time his testimony was taken he had just enlisted as a common soldier. (35.)

He swears in utter contradiction of all the other witnesses on the part of the propeller, and to utter impossi-

bilities, which he could not explain, and which of course could not be explained. He swore the barque lay square across the stern of the tug, thus most absolutely contradicting all the other propeller's witnesses. He swears to this impossibility, and even adds (36) that the whole barque, stern and all, was off towards the Canada shore one hundred feet away from astern of the tug, (and it is to be remembered that the propeller claims, and has to claim, that when she passed the tug the barque was directly after the tug, or else why did not the propeller run off for the Canada shore sooner? and of course, therefore, the barque must have got square across the tug's stern and off towards the Canada shore one hundred feet, while she was running half the length of the towline, for that is all she could do before the collision,) and yet the port bows of vessels came together!

Of couse, such testimony as this is worse than useless.

Carroll was on the tug; a fireman, a cab driver, but no sailor. He only swears, however, to appearances entirely consistent with the fact that the barque sagged down the stream, but did not sheer. (36, 37.) Indeed, if the barque had sheered she would not have presented the appearance Carroll swears to.

Young was master of the tug. He came hurriedly on deck just before the collision. He did not know the course of the tug had been changed. Not knowing this, especially as the tug was clear over on the westward channel bank, the barque would under the natural deception already referred to, appear to sheer, and every appearance was such as it would be, the barque sagging down the stream, and the tug, without his knowledge of her change, running on her divergent line. (37.)

Horner, the wheelsman of the tug, swears to substantially the same things, to appearances such as would

exist, the barque sagging down the stream slowly, obedient to her port helm, and the tug running off on her divergent line. (44.)

The statement made in the interest of the tug, after the collision, not even sworn to, is of course not evidence. It states, however, absolute impossibilities. It states that as the propeller passed the tug, the barque was heading to the eastward of the tug, nearly at right angles with her. This all the propeller's men contradict, for they swear that when the propeller passed the tug, the barque was following straight after the tug. The port bows of the vessels came together. This is entirely inconsistent with the statement that the barque lay at anything like right angles with the tug.

The master of the propeller swears that when the propeller was abreast of the tug, the barque was in line with the tug, that the barque then showed her red light, and did not show her green light until the propeller got past the tug, and was within fifty feet of the barque, (which shows that the barque could not have sheered before the propeller got past the tug,) and after the propeller got past the tug the barque showed her green light. (52, 53.) This is the substance of his evidence with respect to the sheer of the barque.

The mate of the propeller swears to substantially the same thing. (67.)

The look out and engineer of the propeller give no evidence on the subject. (75, 76, 77.)

The testimony of the captain and mate of the propeller is partially true, (see *Point Fifth, II,*) but it does not tend at all to show that the barque sheered. It does tend to show that the propeller passed very close to the tug. That the barque could have so sheered, is absolutely impossible, (beside its being opposed to the evi-

dence of the barque's crew, the tug's mate and Hackett,) for three absolutely controlling physical reasons already stated.

The collision snapped the tow-line, broke it, and it sprung back. (44, 84, 94, 103.)

The night was a clear, starlit night—a good night to see in. (55, 44.)

The signal lights on all the vessels were good. (30.)

The evidence as bearing upon the navigation of the vessels will be hereinafter considered under the points respecting such navigation.

POINT FIRST.

That the barque was in no sense liable for the acts or omissions of the tug, is now settled beyond all possible question.

I. This is settled by most authoritative decision.

The Quickstep, 9 *Wallace*, 664, 670, 671.
Sturges vs. Boyer, 24 *Howard*, 110, 122, 123.
The Express, 1 *Blatchford*, 365.
The James Grey, 21 *Howard*, 184–191–194.
The Hector, 4 *Blatchford*, 199.
Sproul vs. Hemmingway, 14 *Pickering*, 1.

II. No fault upon the part of the tug is charged in the libel, and none can be claimed here.

McKinley vs. McNish, 21 *Howard*, 343.

III. It is even, if possible, more plain that the barque was not liable for any fault upon the part of the tug, from the fact that by the custom of the river, as in this case, the tug did the towing by specific contract and for a specific price; and determined the length of the tow-line, when the tow should stop, the speed, the course in the river, and in short did everything that was done with respect to the navigation of both barque and tug. This is unquestionable. (103, 79.)

Blake vs. Ferris, 5 *N. Y. R.*, (*1st Selden*,) 48, 53, 57, 68, 61.
The Quickstep, 9 *Wallace*, 664, 670, 671.
Sproul vs. Hemmingway, 14 *Pickering*, 1.

IV. The consequence, as a matter of fact, is, (that as the propeller claims that the barque did not sheer until the propeller was abreast the tug, and when both propeller and barque at combined speed had only the length of the tow-line—about two hundred and fifty feet—to run, and the propeller claims this for the reason that if the barque had sheered before, the propeller should sooner have run off in her clear half mile of channel toward the Canada shore,) the consequence is, *it is an impossibility for the barque to be in any fault even if she did sheer, when either the tug (for whose fault the barque was not liable,) or the propeller had really brought barque and propeller within about two hundred and fifty feet in space, and say thirteen seconds in time, of each other*, (for the combined speed

of the vessels past the land was about twelve miles an hour, (103, 82, 69, 78, 63,) and the two would run the two hundred and fifty feet in about thirteen seconds.) It was impossible for the barque to commit any other fault than sheer, within that thirteen seconds and in running at most one hundred and twenty-five feet, for down to that time she had followed the tug, (as the propeller claims and has to claim, as has been stated, 52, 53, 57,) and had no other duty to perform.

Even if she did sheer under such circumstances, when she was in no degree to blame down to that time, under familiar and most strongly established rule, (see *Point Second*,) she cannot be held in fault, placed in that sudden peril as she was, in no degree by her own act. The statement of this now familiar rule, (and it seems to have escaped the thought of the Circuit Court, and indeed was not nearly so well and plainly settled when this case was decided at Circuit,) and its application to facts so perfectly undisputed and indisputable, are abundantly sufficient alone, to dispose of this case.

The consideration will be more directly and elaborately presented hereafter. (See *Point Second.*)

It is now but barely stated, for the purpose of clearly ascertaining the only claim which can be even made against the barque, and enabling the propeller's conduct to be the more plainly considered.

POINT SECOND.

Upon the opinion delivered in the Circuit Court, or rather upon the facts as found in that opinion, upon rules most absolutely and most plainly settled since that opinion was delivered, the decree of the Circuit Court should be reversed and that of the District Court affirmed.

I. As already appears (see *Point First, IV.*) the only fault the barque could commit, was to sheer, when barque and propeller were within about two hundred and fifty feet and about thirteen seconds of each other.

II. Whatever the duties of the propeller and tug as to each other might have been, and whether the propeller and tug were "meeting end on or nearly so," or "crossing so as to involve risk of collision," or how they were meeting, was of no consequence as to the barque. Her sole duty was to follow the tug, and if the tug committed a fault, the barque was not responsible. (*Point First.*)

III. Under these circumstances, in the opinion of the Circuit Court, it appears, or is found and decided:

1. That the propeller did not change her course soon enough, and that she ran for a distance of over a mile and a half, entering a crowded river, where the greatest watchfulness was required, directly down upon the tug and barque, without change of course.

2. That when she did change, although she had a wide and unobstructed channel towards the Canada shore, she did not change enough in the change she did make; and that if she had changed even a point further (28) there would have been no collision. "Common vigilance," says Judge DAVIS, "required that when they changed the course of the propeller, they should make a more decided change."

3. That to run even within one hundred feet of the tug, when she could so easily have gone further to the eastward, was a fault in the propeller.

4. That to enter Detroit River, under the circumstances, required "great watchfulness and care" on the part of the propeller; that the propeller entered the river, with all the lights then visible before her, substantially without any care, and, without even change of course, until the signal was heard from the approaching tug, ran right down upon the tug and tow, and upon a course on which the propeller had been running for more than a mile and a half.

5. That the propeller was in distinct fault for the reason that she ran into the river, under all the circumstances, at her usual speed. She should have materially slackened her speed.

IV. These distinct faults it is decided in the Circuit Court, the propeller committed. *Beyond all question they placed tug and barque in imminent peril.* They created great alarm, as was shown by the shouted and repeated orders—the hasty action on all the vessels.

V. There is no appeal from the decree of the Circuit Court upon the part of the propeller. Of course she, here, can only defend the decree as there made.

The Quickstep, 9 *Wallace*, 665, 672.

VI. The single fault upon the part of the barque, as found in the opinion in the Circuit Court, (and of course it was the only fault she could commit, see *Point First*,) was that she sheered after the propeller was abreast of the tug. This, says the opinion, was the "result of either mistaking orders or bad management," and which, is not determined.

It is most respectfully claimed that in either case, especially upon doctrine most plainly established by this court, since the decision at Circuit, placed in peril as the barque most unquestionably was by the accumulated faults of the propeller, the sheer, even if it took place, was not a *fault* upon the part of the barque. It was but a natural consequence of the peril in which she was placed, powerless as she was, and placed as she was.

In *The Carroll*, 8 *Wallace*, 302, the case was sufficiently like this to depend upon the same principles.

In the opinion delivered by Mr. Justice DAVIS, the following language is employed: "If the two vessels "in this case were approaching each other in opposite "directions so as to involve risk of collision, the duty "of each was plainly marked out by law. The steamer "was required to keep out of the way, slacken her speed, "or if necessary stop and reverse; while the schooner "was required to retain her course, and was not justified "in changing it unless obliged to do so, to avoid a "danger that immediately threatened her. As the "steamer did not keep out of the way, and as the col- "lision did occur, the steamer is *prima facie* liable, and "can only relieve herself by showing that the accident "was inevitable, or caused by the culpable negligence "of the schooner. * * * The steamer cannot escape "condemnation unless she is able to show that there "was no risk of collision; or that she adopted suitable "measures to avoid it, and the disaster was the result of "misconduct on the part of the schooner. *The fact "that the vessels did collide, explodes the theory that there "was no risk of collision.* * * * The possibility of it (a "collision) is all that is required to charge the steamer, "unless she can establish that she was without fault."

As above appears, Judge DAVIS in this case at Circuit, found and decided that the propeller committed *five* of the most important faults she could commit.

"There is no evidence," the opinion of Mr. Justice DAVIS in the case of *The Carroll*, continues, "to show "that the schooner changed her course until the peril "was imminent," (the Maria Martin did not change her course, if at all, as the propeller claims, and has to claim, else why was she so near? until propeller and barque were within about thirteen seconds of each other, and only the length of a tow-line apart,) "but

"*the natural inquiry arises, which boat was blameable* "*for producing this peril?* The schooner was not, "because she was obliged to keep her course. * * * "*The steamer is, therefore, to blame for suffering this* "*peril to occur, for if it be conceded the schooner was* "*wrong in starboarding her helm, this cannot affect her* "*right to recover, as she was in other respects without* "*fault, because the steamer having the right of way, put* "*her in this predicament, and must answer for the con-* "*sequences.*"

The rules of navigation, the opinion continues, "require, where a steamship and sailing vessel are "approaching from opposite directions, or on intersect- "ing lines, that the steamship from the moment the "sailing vessel is seen shall watch with the highest "diligence her course and movements."

(As in this case, this propeller entering a river mouth, where Judge DAVIS decided at Circuit, she should have proceeded with the greatest caution, and seeing this descending tug towing a vessel which would run on to the tug if they stopped, and which tug and tow, the propeller pushed clear on to the opposite bank, should have proceeded with the highest diligence, as Judge DAVIS decided at Circuit,) "so "as to be able to adopt such timely measures of pre- "caution as will be necessary to prevent the two boats "coming in contact. * * * *Porting the helm a point,* "when the light of the schooner was first observed, "and then waiting until the collision before doing "further," (and this is precisely what Judge DAVIS at Circuit held this propeller did, and there condemned her for the fault,) "*does not satisfy the requirements of* "*the law.* The safeguards against danger, in order "to be effectual, must be seasonably employed, and in

"this case they were not used until the danger was "threatening. *If there was a fault on the part of the "schooner, the steamer committed a far greater, in suf- "fering the vessels to get into such dangerous proximity,"* (this propeller, as Judge DAVIS decided, committed four important faults, besides coming within thirteen seconds, and the length of a tow-line of the barque,) "at "the moment preceding the collision; and as she has "furnished no excuse for this misconduct, is chargea- "ble with all the damages resulting from this collision."

Certainly this case (and were it not for its large importance it would be,) might, with entire safety to the appellants, be submitted upon the reading of this opinion, so condensing within itself, in most perspicuous language, the very principles governing such cases, established as they have been in their clearness mainly by this court, since the decision of this cause at Circuit. There needs but to add to this opinion, citation of

Bentley vs. Coyne, 4 *Wallace*, 512.
The Fairbanks, 9 *Wallace*, 420.
The Nichols, 7 *id.*, 656, 666.

stating the rule, and holding that, under such circumstances, it will not impair the right of a vessel to recover, although she was bound to keep her course, even if she did change it, "for the reason that those "who put the vessel in that peril, are chargeable with "the error, and must answer for the consequences it "occasioned;" holding, to employ the language of Mr. Justice CLIFFORD, in *The Nichols*, with respect to an alleged change of course, that such an error, committed in emergency and peril, which is justly chargeable to the other vessel, is not a fault, and that "mistakes com-

"mitted in such moments of peril and excitement, when "produced by the mismanagement of those in charge of "the other vessel, are not of a character to relieve" the vessel bringing about such peril and excitement, from full responsibility.

See also

The Genesee Chief, 12 *Howard*, 443.
The City of Paris, 9 *Wallace*, 634, 638.
The Scranton, 5 *Blatchford*, 400.
The Western Metropolis, 6 *Blatchford*, 210.

VII. But, without considering too much in detail the case as placed by the findings in the Circuit Court, it is most respectfully claimed, that by absolute decision made in this court, in repeated cases, since that opinion was pronounced, it is settled, aside from the rule and precise point last above referred to, that this decree should be reversed. And these cases arose under circumstances which settle the very principles which govern this case. To quote from the opinions in them, (and it would be done would it not occupy too much space,) would be in clearest language, to state the now indisputable doctrines and rules upon which it must be decided.

See especially, beside the cases last above cited,

The Alleghany, 9 *Wallace*, 523.
The Corsica, 9 *id.*, 634.
The City of Paris, 9 *id.*, 634.
The Syracuse, 9 *id.*, 673.

It is impossible to avoid quotation of the language employed by Mr. Justice SWAYNE in the case of the *Syracuse.*

In that case, as here, the collision was between the tow of a tug and a steamer proceeding under circumstances singularly like those in this case. The steamer and tug first whistled, as in this case, and when, as the propeller claims, in this case, they were about half a mile apart. There was opportunity for the steamer to avoid the tow, as in this case there was half a mile of clear channel on the Canadian side. In that case it was claimed, on the part of the steamer, that the fault was a sudden sheer.

"A tug with vessels in tow," says Mr. Justice SWAYNE, "is in a very different condition from one "unincumbered. She is not mistress of her motions. "She cannot advance, recede, or turn either way at dis- "cretion. She is bound to consult their safety as well as "her own. * * * The character of the fleet could not "be mistaken. The attempt of the steamer to pass the "other vessels at a speed of seventeen miles an "hour"—(In the *City of Paris*, 9 *Wallace*, 634, 637, 638, a speed of seven or eight miles an hour, under similar circumstances, was held by this court to be distinct fault, and in *The Florida*, 4 *Blatchford*, 470, a speed of nine miles an hour, under like circumstances, was also condemned. The speed of the propeller, in this case, was about nine miles an hour through the water, about seven, against the current, past the land. 69, 77, 78, 63,)—"was gross and wanton recklessness. "Before turning her head to the eastward she should "have slowed her engine. If the prospect of danger "darkened, she should have stopped, and if need be, "reversed it. She had no right thus to hurl herself

"like a projectile into the midst of the vessels before "her, taking the hazard of the consequences, and thus "imperilling herself and them, with all the lives and "property on board. * * * The alleged fault of the "*Syracuse* lies in the sudden sheer to the eastward "which is imputed to her. * * * *That she voluntarily "and unnecessarily sheered and put herself in the way "of the steamer, as charged, is very improbable.*" Is it not equally improbable that the barque in this case sheered toward the steamer, when there is no doubt at least that the order was given and repeated and heard on every vessel and by many witnesses, that she should port, (83, 93, 97, 103, 109,) which would make her sheer the other way? And see *Haney vs. Balt. S. P. Co.*, 23 *Howard*, 287, 293, where the late Mr. Justice GRIER, speaking of a similar claim that a sudden sheer caused a collision, says: "The hypothesis * * * that the "schooner turned round and run herself under the "bows of the steamer is not only grossly improbable "in itself, but contradicted by the testimony, and is "a mathematical impossibility."

Mr. Justice SWAYNE continues consideration of the case of the *Syracuse*, referring to the positive testimony of the crew of the Syracuse that there was no sheer, as we refer here to the testimony of the crew of the barque; states the character of the injury, as we do here; and says, if there had been a sudden sheer the stem of the Syracuse would have struck the steamer, as we say if the barque had sheered, her stem would have struck the propeller, and the angle between their midship lines would have been greater at the instant of collision than it was; and declares this fact alone to be fatal to the theory that the Syracuse sheered.

It is added that other views, (and among others the

views beyond question so strongly stated in the other cases in the 8th and 9th of *Wallace* above referred to,) might be presented, inculpating the steamer.

Must it not be held that this case is already decided by the cases cited from the 8th and 9th *Wallace?* Does not quotations from the opinions in them absolutely apply to all the material circumstances in this case, and decide it?

VIII. The case under this point is argued upon the assumption that the barque did sheer. Of course it is claimed that she did not; did not as a matter of fact do that improbable thing; could not do it, as it was physically impossible.

See Point Fourth, III, IV, V.

If she did not, the barque is beyond even imputation of blame.

POINT THIRD.

Upon the facts as shown, upon analysis of the evidence, it appears that the propeller really committed all the faults she could commit under the circumstances, except that her signal lights were good.

1. The crew of the propeller were incompetent.

2. They were improperly placed and employed, running into such a river, and the propeller being equipped as she was. This the District Judge decided.

3. The propeller did not change her course soon enough, or run far enough over toward the Canada shore in her unobstructed half-mile of channel, when she had pushed the tug and barque on to the opposite channel bank, as she beyond all question did. This both Circuit and District Judge decided.

4. Although approaching the tug and barque so as to involve risk of collision, indeed when a collision was imminent, she did not slacken her speed or stop. This both Circuit and District Judge decided.

5. She did not have a proper look-out. This the District Judge decided, and the Circuit Judge held, but held that it was immaterial.

6. She crowded tug and barque away over on to the westward channel bank, when the propeller had an unobstructed half-mile of channel upon the Canada side. This both Circuit and District Judge decided.

7. Running into a crowded thoroughfare, when at least eight substantially powerless vessels were ahead of her, in a difficult channel, she ran at full speed and without sufficient vigilance. This both Circuit and District Judge decided.

8. She ran close to the tug before she ported at all to avoid her, and then would not have ported at all had she not been aroused by the tug's whistle to the danger of the situation. (She was no such distance from the tug, however, as she claims she was at this time.) When she did change, she did not change sufficiently. This both Circuit and District Judge decided.

9. She did not pass the tug one hundred feet off, as she claims. It was physically impossible that she should have done so and have the collision happen as it did. She really passed the tug somewhere from fifteen to forty feet off, and in such nearness as to make danger most imminent.

All these faults will be established upon the evidence; and yet, under all these accumulations of fault upon the propeller's part, because she claims, what it will be conclusively shown was not and could not be true—because she claims that after she had accumulated these perils around the barque, and when propeller and barque were only about two hundred and fifty feet and about thirteen seconds apart, *and this is all she pretends to claim*, the barque sheered!

I. The crew of the propeller were incompetent.

1. The master was young and inexperienced. (49, 55.)

2. The engineer on duty was the same. (76, 77.)

3. The look-out was ridiculously incapable. (75, 76.)

The Washington, 3 *Blatchford*, 276.
Chamberlin vs. Ward, 21 *Howard*, 548.
The Niagara, 21 *id.*, 6, 23.

II. The men were improperly placed and employed running into such a river, and with a propeller so equipped.

1. The master and mate were forward on the promenade deck, talking together, as they ran into this crowded river, ablaze with the lights of the various vessels in it. (23.) They could not see a compass where they stood. (57.) They could not readily get at the whistle string by which signals were given, or give orders to slacken or stop, where they stood. (57.) This was most negligent, running into such a river, and down upon such lights as they were.

III. The propeller did not change her course soon enough, or run far enough toward the Canada shore in her unobstructed half mile of channel, as she ran toward the tug and barque, after making their lights as the captain and mate of the propeller swear they did, and as appears from the evidence upon the part of the propeller alone.

1. The propeller, as her master and mate swear, was running north by east, and heading for Bois Blanc light. (51, 65, 66.)

2. The propeller made the lights, the red lights, of the tug and barque about two miles away, and about half or three-quarters of a point on the propeller's *starboard* bow, thus showing that the propeller was running across the course of the tug and the barque. The captain and mate of the propeller swear to this. (51, 66.)

3. The propeller ran on *a mile and a half without changing her course, closing in the lights of the barque and tug, (thus showing they were coming together,)* and to this significant fact the mate of the propeller testifies, (70,) and her wheelsman swears to the same thing. (20, 21.)

The testimony on the part of the propeller, as given by men on the tug, corroborates all this.

Byron, the mate of the tug, says that when he first saw the propeller's lights, he saw her green light a little on the tug's *port* bow, (26,) thus showing that tug and propeller were crossing in their courses. At the time when the propeller whistled she was not over a quarter of a mile off, Byron says, (26,) and Horner, the wheelsman of the tug, says she was not a quarter of a mile off, and was heading right on to the tug's bow. (44.)

Young, the look-out of the tug, says the *green* light of the propeller could be seen until she was a quarter of a mile off, and kept *closing in* as she

approached, and she seemed to be coming right on to the tug. (35.)

McGrath, the engineer of the tug, says that when the tug's second whistle was blown, (and the mate of the propeller says the tug was then dead ahead of the propeller,) (71,) he could see the green light of the propeller, and she was heading for the tug. (30.)

Horner, the wheelsman on the tug, and one of the propeller's witnesses, swears that the propeller *continued to bear right on to the tug until the mate of the tug sung out and asked them where they were going; that the mate of the tug told his wheelsman to port, to clear the propeller, and when that order was given the propeller was not a quarter of a mile off, and two whistles had been blown by the tug.* (44.)

4. *The propeller, then, upon her own most unqualified evidence, ran down from about two miles off, until she was within less than a quarter of a mile off, straight on to the tug and barque.*

After such a fault as this alone, it is impossible for her to charge any fault upon the barque.

See Point Second, VI.
Chamberlin vs. Ward, 21 *Howard*, 548, 566.
The Nichols, 7 *Wallace*, 656.
The N. Y. & L. U. S. M. Co. vs. The Pacific, 21 *Howard*, 372, 385.
The Osmanli, 7 *Notes of Cases*, 507.

IV. Although approaching tug and barque so as to involve risk of collision, indeed when a collision was imminent, she did not slacken her speed or stop.

The facts are indisputable. That there was risk of collision has been held by Circuit and District Court. The fault, is a statutory fault.

13 *Statutes at L.*, 61.

Under such circumstances as these, and caused as this alleged sheer, if it took place, was, this fault alone would be sufficient to make the propeller solely responsible.

1 *Parsons on Shipping*, 595–598, *and cases cited.*

V. The propeller did not have proper look-out.

1. The look-out was ludicrously incompetent. (75, 76.)

2. The Circuit and District Court both virtually held the look-out incompetent, but at Circuit it was held that such incompetency was immaterial, for the reason that tug and tow were seen long before the collision. While this aggravates the other faults above referred to on the part of the propeller, and in such accumulation of fault, so slight a one comparatively, may be immaterial, still, it cannot be said but that a competent man as look-out, properly placed and vigilant, might have prevented this collision. It is by no means so certain that the captain and mate saw tug and tow, as they swear. They were forward talking. (23.) If they saw what they say they did, and understood what they saw, how could they have run right on to tug and tow for

more than a mile and a half as they did, absolutely thrusting them upon the westward channel bank? As has been conclusively established, in fact, and upon insurmountable authority, they placed tug and tow most recklessly in peril. If competent men, they must have known the result of their acts, if they really saw what they swear they saw. In charity, may it not be said of them, that they did not see what, in equal charity, we may say, they thought they saw? or, were they deceived by some appearance, which a competent look-out would have seen and understood? Would the propeller, with her half mile of clear channel on her starboard hand, have steadied and *starboarded* her wheel, as she did, (21, 23,) had she had competent look-out? The rule in this respect is beyond question, that the look-out must be competent, properly placed, and shown to be vigilant. If there is no competent look-out, the burden is on the vessel thus in fault, to show that that fault did not contribute to the collision, or she must be responsible for all the consequences.

The Ottawa, 3 *Wallace*, 268, 273.
Pope vs. The Forbes, 1 *Clifford*, 331, 346.
Haney vs. Balt. S. P. Co., 23 *Howard*, 287, 293.
The Emily, Olcott, 132.
1 *Parsons on Shipping*, 577, 578, *and the many cases cited.*

Has the propeller shown that if a competent look-out had been on her promenade deck, he would not have prevented the vessel from rushing upon visible danger, with that recklessness which the Circuit Court so strongly condemned?

VI. The propeller most recklessly crowded the tug and tow on to the westward channel bank. She ran at her ordinary speed into the mouth of Detroit River, where the channel is comparatively narrow, somewhat tortuous, and where the current is considerable, when there were at least eight substantially powerless vessels in motion, visibly before her. It was a place where tugs made up and cast off their tows. Running in for at least a mile and a half directly on to the tug and tow, (*Point Third, III,*) with her officers not properly placed, no compass easily to be seen, or signal easily to be sounded, (*Point Third, II,*) without competent look-out, (*Point Third, V,*) she did not change her course until warned to do so by the tug. Then she only changed about from half or three-quarters of a point, as her mate says, (67,) to a point or a point and a half, as her master says, (61,) when she had an unobstructed channel, half a mile wide, in which she might have run off towards the Canadian side, and only claims at most that she passed the tug at a distance of a hundred feet! None of these things are to be even doubted. Circuit and District Court alike found them as facts, and condemned them as faults.

Such speed was improper. Every act of the propeller was a fault. They place her in such position that she cannot escape sole liability, even if the barque did sheer, much less upon a doubt, if doubt there can be, as to whether she did sheer.

Nothing can really add to the strength of the cases above cited. (See *Point Third, III.*)

But see

Newton vs. Stebbins, 10 *Howard*, 586, 606,

where Mr. Justice NELSON, in delivering the opinion of the court, says, with respect to a steamer similarly situated:

"We cannot omit to remark, before leaving the case, "that the pilot of this vessel was greatly to blame in "not having slackened her speed as he approached "the fleet of river craft, which was slowly descending "this stretch of the river, at the time it opened to his "view. *The channel is about half a mile wide at this "point, and there were some seven or eight vessels coming "down, all within a reach of less than two miles, and "from the state of the wind, not in a condition to make "effectual manœuvers with a view to avoid immediate "danger.*

"And yet the clear weight of the evidence is, that "the steamboat continued her speed, passing several "of them, which narrowly escaped the danger, until "she reached the sloop in question, at a rate of from "*eight to ten* knots the hour.

"It is manifest to common sense that this rate of "speed, under the circumstances stated, exposed these "vessels to unreasonable and unnecessary peril."

And see, also,

Culbertson vs. Shaw, 18 *Howard*, 584.
The Bay State, 1 *Abbott*, 235.
Ward vs. The Rossiter, 6 *McLean*, 63.
Fashion vs. Ward, 6 *McLean*, 152.
The Despatch, *Swabey*, 138.
1 *Parsons on Shipping*, 573, *and cases cited.*

That it was grave error on the part of the propeller to push the tug and tow over on to the westward

channel bank; and that the barque would not be responsible under such circumstances if she had sheered.

See

Fritz vs. Bull, 12 *Howard*, 466, 470, 471.
Goslee vs. Shutes, Exr, 18 *id.*, 463.
Waring vs. Clark, 5 *id.*, 441, 465.
The Lyna, 11 *L. T.*, (*N. S.*) 74.

VII. The propeller ran close to the tug before she ported at all. She was not half a mile off when she first ported, or anything like such distance, and would not have ported at all had she not been aroused to the danger of the situation by the tug's whistle. She undoubtedly at first intended to pass the tug and tow upon the westward side, and thus brought all into the dangerous position in which they were.

When she did change, she did not make sufficient change; change enough for the situation.

1. As above appears, (*Point Third, III,*) the propeller ran down upon tug and barque for at least a mile and a half, and as the propeller claims, until she was within about half a mile of them. Wrong as this was, they ran much nearer to the tug, before any change.

The men on the tug say that she was only about a quarter of a mile off when she blew her whistle, (30, 35, 44,) and the wheelsman of the tug says she was then not over a hundred feet off. (45.) These are the propeller's own witnesses.

The officers of the propeller say that under the first order to port, and before they steadied, they

only swung from half a point to a point and a half. (61, 67, 70.)

Under the last order to port, and after they were abreast of the tug, and when they had only about one hundred and twenty-five feet to run before the collision, they swung two points and a half before the collision. (73.) If they would swing two and a half points in running about one hundred and twenty-five feet, how far did they run in swinging even one point and a half?

Again, the propeller claims that she first whistled and ported when the tug was abreast of the Monitor, (26, 28,) and that the collision took place about five hundred feet astern of the Monitor, which was passing up stream, (34,) and was compelled by the course of the channel just above to change her course in the channel so as to bring the barque more astern at the time of collision. The propeller certainly did nothing, neither whistled or ported, until after the tug's first whistle, (this the Circuit and District Court both find,) and beyond all question, therefore, if the collision took place about five hundred feet astern of the Monitor, as the propeller's testimony states, the propeller must have been very close to the tug, within at most two hundred feet of her, before she either whistled or ported. And it is to be remembered for more than a mile and a half she was running steadily down upon tug and tow;—indeed in a direction to cross their bows. (*Point Third, III.*)

2. But the propeller was really intending to pass tug and tow upon the other side.

Why else did they run so long with the tug's light bearing off the propeller's starboard bow, and the propeller therefore virtually running across the tug's course, as the propeller's wheelsman, as well as her officers, swear she did? (20, 21, 59.)

Why else did the propeller pass so far over to the westward side of the channel?

Why else did they not answer the tug's first whistle, as the propeller's wheelsman and all the tug men, (the propeller's own witnesses,) and the barque's crew, swear she did not? (21, 26, 30, 35, 44, 83, 93.)

Why else did the captain of the propeller tell the mate to sound two whistles, as the propeller's wheelsman swears he did? (23.)

Why else did she not run off in the half mile of clear channel on the Canada side?

Why else did she continue on her dangerous course until aroused by the tug's whistle? And it was the second whistle that she answered, and not the first, as all of her own witnesses, (except her captain and mate, who were responsible for the disaster,) her wheelsman, the tug's crew, as well as the barque's crew, swear, (21, 26, 30, 35, 44, 83, 93,) and in this, her attempt to pass upon the wrong side, may lie the explanation of the cause of the whole disaster. Unless, indeed, that explanation may lie in the fact that heedless master and mate, and incompetent look-out, supposing they were steering for another light, were actually running straight into tug and barque—actually steering for the tug's light. (58, 65, 66.)

2. When she did change she did not change sufficiently. This the Circuit and District Court both find. Had she changed one point more, there would have been no collision. (28.)

When the propeller heard the tug's whistle she knew it was a signal to pass on the port hand. She knew that the tug was coming down with a loaded vessel. Yet she only ported when close upon the tug, and only swung from half a point to a point and a half, (61, 67,) and then steadied, and starboarded, (21, 52, 67, 70, 23,) and this Circuit and District Court hold was most decided fault.

"Porting the helm a point," says Mr. Justice DAVIS, in *The Carroll*, 8 *Wallace*, 302, with respect to vessels not nearly so dangerously placed, "does not satisfy the requirements of the law." (See *Point Third, III.*)

VIII. The propeller claims that she passed the tug one hundred feet away. This was not so. It is against positive proof. It was physically impossible. She really passed within at most from fifteen to forty feet off.

1. It is against the proof that it was so. The barque's crew were in the best possible position to judge, and they swear the propeller passed much nearer. (82, 93, 97.)

2. If the barque did not sheer, of course the propeller must have passed the tug much nearer than one hundred feet off, and that she did not

sheer, is most clearly established hereinafter. (*Point Fourth, II.*)

If the barque did not sheer, the propeller must have passed close to the tug to have seen the barque's green light, as the master and mate of the propeller say they did. (52, 53, 67.) Passing close to the tug, they could see the green light of the barque. (*Point Fifth, II.*)

This precise point is subsequently considered; but, it is repeated, if the barque did not sheer, the collision happening as it did, the propeller passed the tug much nearer than one hundred feet off.

The whole testimony of the propeller's crew as to her change of course before passing the tug, with respect to steadying her wheel, shows that the propeller must have passed much closer to the tug than she claims.

The officers of the propeller swear that for more than a mile and a half the propeller had run down upon the tug and barque, and really so as to cross their course. (*Point Third, III.*) They ran close to the tug, within say about one hundred and twenty-five feet of her, as they swear themselves, and then she was only about a point on their port bow, and then steadied, and afterwards starboarded three or four spokes. (60, 61, 71, 23.) That the propeller came very close, and changed her course very little, is sworn to by the propeller's witnesses, the tug men. (*Point Third, III.*) This is the absolute, uncontradicted evidence, in substance, of all the propeller's witnesses. It is testimony as to the leading facts in collision cases—evidence much more reliable than any mere estimate as to the distance at which the tug was passed. "Estimates of distance," says Mr.

Justice SWAYNE, (*The City of Paris*, 9 *Wallace*, 634, 637,) "*are little to be relied upon.*" If the evidence of the propeller's witnesses, upon these leading points, is to be relied upon, (and if it cannot be relied upon, what can be in a collision case, given as it was upon the part of the propeller?) it was absolutely impossible that the propeller should have passed one hundred feet off. She must have passed much nearer.

This slight examination of the accompanying diagram, made merely to illustrate the testimony of the captain and mate of the propeller, must show upon the propeller's own evidence.

That it was a grave fault to thus pass so near, is beyond all question. See authorities cited under *Point Third, VI.*

POINT FOURTH.

The barque was not in fault. After such accumulation of faults shown upon the part of the propeller, it is entirely unnecessary to consider the conduct of the barque. This brief, however, would not be complete without that consideration. It will be shown that the barque was not in fault.

I. It is impossible to claim that there was any fault upon the part of the barque until the propeller was abreast of the tug.

1. The tug, according to the custom of the river, (103, 81, 79, 92, 97,) determined the length of the tow-line, speed, the course in the river, and everything respecting the navigation of tug and tow.

2. The barque can in no sense be responsible for anything connected with the navigation of tug or tow, and for no fault of the tug. (See *Point First.*)

3. That the barque followed directly after the tug, as was her duty, and this was her sole duty, (103, 81, 79, 92, 97,) is beyond question. The propeller admits that she did this, and must admit it, or else why did she not run farther off into the unobstructed channel on the Canadian side? Her officers swear to it. (52, 53, 57.)

II. The only fault then that could be even imputed to her is, that she sheered after the propeller was abreast the tug, and when propeller and barque were only about thirteen seconds and the length of a tow-line apart. It was no fault if she did sheer, as has been most conclusively shown. But did she sheer? She did not, and this is not only shown by the weight of the evidence, but it was physically impossible that she should have done so, and have this collision happen as it did.

1. This is shown by the weight of the evidence. The whole crew of the barque and Hackett, the

settler, swear (and they were in the best position to judge) that she did not sheer. (83, 97, 98, 93, 109, 110.)

2. The probabilities are against the supposition that the barque sheered. "That she voluntarily and unnecessarily sheered," says Mr. Justice SWAYNE, speaking of a similar case in *The City of Paris*, 9 *Wallace*, 634, 637, 638, "and put herself in the way of the steamer as charged, is most improbable."

Upon the tug, upon the Monitor, and upon the barque, the order "hard a port" was heard again and again." (32, 83, 93, 97, 103, 109.) It is most improbable that the very competent wheelsman of the barque, (96, 97,) even in the exigencies of that moment, should have disobeyed that order, and put the wheel astarboard, and he most positively swears he did not, (96–99,) as the others of the crew of the barque swear he did not, for they swear they saw him put the wheel aport. (83, 93.) It was the natural thing for him to do—the sailor's instinct—to put the wheel aport.

3. This is the best evidence on the point. It is recognized as the best upon controlling authority.

The Neptune, *Olcott*, 483, 494, 495.
The Indiana, 1 *Newberry*, 115, 120.
The Governor, 1 *Abbott*, 113.
The Naragansett, *Olcott*, 246, 247.
The Argus, *id.*, 304, 307.
The Rhode Island, *id.*, 505.
The Genesee Chief, 12 *Howard*, 461.

The N. Y. & L. Co. vs. Rumball, 20 *Howard*, 371, 381, 382, 383.
The Fairbanks, 9 *Wallace*, 420.

4. Such evidence is of much more value than that of the tug men, or the Monitor's men, all in one interest as they were. (33.)

5. And the mistake of such men, if it was their honest mistake, was most natural. They did not know that the tug had changed her course suddenly, as she had. That light, quick-moving vessel, would move suddenly off to starboard, did move off to starboard on a divergent course of half a point. The heavily laden barque, with her deep draught of water, would sag slowly down the stream, making the angle between her and the barque greater as each proceeded. This would present the precise relative appearance that they would present had the tug kept her course, and the barque really sheered. The deception was most natural. The tug running off on her divergent course of half a point, would actually, as the barque sagged down the stream, cause the angle between their courses to be about two points before the collision, as examination of the accompanying diagram will show. The tow-line would come over the port quarter of the tug, and lead off the starboard bow of the barque, and snap and fly back, as it actually did when the collision happened, (84, 94,) when, as one of the propeller's witnesses state, it felt as though the tug had struck a rock. (44.)

The realization of these things explains all the otherwise irreconcilable evidence in the case. It explains how the collision happened. Slight attention to the accompanying diagram, made however merely to illustrate the evidence of the master and mate of the propeller, will elucidate the whole.

5. But the evidence on the part of the propeller shows conclusively the barque could not have sheered. That evidence shows that the propeller passed very close to the barque, much nearer than one hundred feet off.

Point Third, VIII.

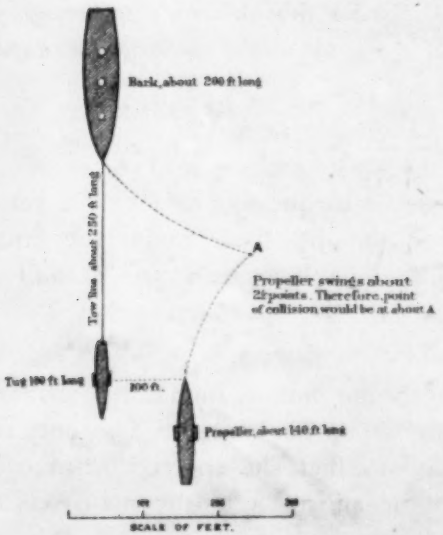
If the propeller passed so near, the barque could not have sheered to any extent. Had she done so, she would have thrown herself across the bows of the propeller.

III. It was physically impossible that the barque should have sheered, and have the collision happen as it did.

1. The propeller claims that the barque swung after the propeller was abreast of the tug, (31, 52, 53, 67,) when of course the propeller and barque were only the length of a tow-line, and about thirteen seconds apart; and after that the propeller swung under her hard-a-port wheel two points and a half. (73.) Admitting that propeller and barque

were moving at the same speed, (and the propeller really passed the land the fastest,) and it could not be possible. Each would only have about half the length of the tow-line—about one hundred and twenty-five feet to run. And yet in running that distance, the barque, from her position directly astern of the tug, as the propeller's officers swear, (31, 52, 53, 67,) swung against the force of the tug, pulling her the other way, the one hundred feet distance the propeller passed the tug, the two and a half points additional that the propeller swung! The claim is preposterous.

The slightest consideration shows, that the barque did not sheer, and that the propeller passed the tug much nearer than one hundred feet. The following slight sketch illustrates the absurdity of the proposition:



2. It is impossible, as this court recognized in the case of *The Syracuse*, 9 *Wallace*, 672, 677, that the barque could have sheered and have the vessels strike their port bows together, as they unquestionably did. Had the barque sheered, as the propeller swung off her two points and a half, the stem of the barque would have struck the propeller. They would have come together at nearly right angles.

3. Had the barque sheered, especially as the propeller swung off two and a half points, the injury upon the side would have been much different in shape. Its shape shows the vessels came together at an angle of between one and two points. This the positive evidence also shows was about the angle they did come together. (84, 94.) Had the barque sheered, the shape of the break in the propeller's side would have shown that the vessels came together at about right angles.

See Mr. Martin's testimony, page 112, *and the model showing the shape of the break.*

V. Against such weight of evidence, can it be claimed the barque sheered? And yet the inquiry is idle. If she did sheer under the circumstances, it would be no fault. (See *Point Second.*)

VI. Some minor, immaterial criticism has been bestowed upon the barque. The only fault she could commit was, that she sheered. But every particle of such criticism can be most conclusively answered.

1. At Circuit, it was claimed that she did not exactly follow the tug. That no vessel exactly follows another is matter of common knowledge. But it appears that the barque did follow the tug properly and as usual. The heading of vessels in tow always varies somewhat from the tug. (27.) The barque did not vary more than vessels usually do, (26, 28.) She kept right after the tug, and did not steer badly, (81, 28, 90, 92,) and was a good steering vessel. (99, 103.) If she did not follow the tug exactly, it was no fault.

The Express, 1 *Blatchford*, 365.
The Argo, *Swabey*, 462.
Fritz vs. Bull, 12 *Howard*, 466, 470, 471.

Does any one believe that any thing connected with her steering caused the sheer, if any such took place, that is claimed to be a fault on her part? If she sheered in the shallow water, into which she was forced by the tug, as such vessels will not mind their helms so quickly in such shallow water, (103,) *that was no fault on her part.*

2. Nor was there anything connected with any absence of a special look-out from her decks, or her master's absence, that had anything to do with the collision. As a matter of fact, her mate was on deck in charge, (79,) and her second mate was forward on the look-out, sent there by the captain, who had gone below on necessary duty, (101, 92;) but what had the absence of look-out or the master to do with the collision? *The barque had nothing to do with the navigation.* (*Point First.*) *Her sole duty was to*

follow the tug. The proper order to be given on the barque was to port. It was given again and again. It was heard all around.

The only one who could obey or disobey that order, was the wheelsman. Presence or absence of master or look-out could have nothing to do with his action—nothing to do with any sheer. If the wheelsman mistook the order heard everywhere, master or look-out could not have prevented that mistake.

3. It is intimated the second mate mistook a whistle as a signal to cast off the tow-line. Suppose he did. The whistle did not indicate that either vessel was to change her course. It merely indicated upon which side the vessels should pass each other. It was not to be supposed that either tug or barque would port, away over on the westward side of the channel as they were. Nor would either have done so had they not been pushed over upon that side by the propeller. But it is repeated, what had this signal to do with any duty upon the part of the barque, as her sole duty was to follow the tug? She did follow, as has been shown. If she did not, it was because the wheelsman of the tug put his wheel the other way, although the order to him to port was shouted all around. If he did, it was in alarm at the imminent danger in which they had all been placed by the many faults of the propeller. With that act of the wheelsman, (and in his act can the only fault on the part of the barque be even claimed,) no one else, nothing else, had anything to do.

POINT FIFTH.

How then did this collision happen? What were the causes, beneath settled rules, which led to it? The faults were the faults of the propeller, and it needs but slight consideration of the evidence to show how naturally they produced their result.

I. The faults of the propeller have already been stated. Let them be repeated here.

1. Her crew was incompetent. (*Point Third, I.*)

2. They were improperly placed, running into such a river, and equipped as the propeller was. (*Point Third, II.*)

3. The propeller did not change her course soon enough, and ran directly down upon tug and barque, crossing their course for more than a mile and a half. (*Point Third, III.*)

4. Although thus approaching the tug and the barque, and so as to involve risk of collision, the propeller did not slacken her speed. (*Point Third, IV.*)

5. She did not have proper look-out. (*Point Third, V.*)

6. She recklessly crowded the tug and barque away over on to the westward side of the channel, when she had at least a half mile of clear channel on her own side. (*Point Third, VI.*)

7. She most recklessly ran into the crowded river, a thoroughfare of vessels, with at least eight other substantially powerless vessels visibly before her, and with many circumstances of danger around, at a rate of speed which has been most authoritatively condemned again and again. (*Point Third, VI.*)

8. She ran very close to the tug—far too close, before she changed her course at all, and then did not change it sufficiently. (*Point Third, VII.*)

9. She passed the tug very close—at most not more than from fifteen to forty feet off. (*Point Third, VIII. Point Fourth.*)

II. How then, as the propeller committed these faults, so ran, and upon such courses, did the collision happen? The propeller ran very close to the tug, and when abreast of her was not more than from fifteen to forty feet off. The tug had ported and run off upon a line divergent from her course

just before, half a point. The heavily laden barque with her deep draught of water, sagged down the stream, unable to obey her helm as quickly as the tug; and, so sagging down, as the tug ran on her divergent line, making the angle between their courses, before the collision, about two points. The propeller, when abreast of the tug, and, so to speak, criminally close to her, steadied her wheel, *starboarded her wheel*, (*as her wheelsman swears he did*,) (23), saw the green light of the barque, (52, 53, 67,) as she would beyond question, (and this might make the officers of the propeller think that barque had sheered, *for they did not know the wheelsman of the propeller had starboarded his wheel*, (20, 23,) and the collision happened, as it must have happened; happened as it did, the *port bows of the two vessels striking at the angle they did*, and breaking in the side of the propeller in the *shape which could only thus be caused*.

The whole is plain, indisputable, upon general view, upon the most close analysis of all the evidence. There cannot be even an intelligent doubt about it, it is most respectfully, yet most confidently claimed, after fair consideration of all the testimony. So happening, as a matter of common sense, by all the rules of navigation, under an utterly insurmountable accumulation of precedent and authority, most plainly pronounced since the decision at Circuit, the propeller was solely responsible for this collision.

III. But in truth, all other considerations are substantially useless, save such as present the views stated, upon irrefragable authority, under Point Second. Un-

der the rule absolutely established by that authority, the decree of the Circuit Court must be reversed, and that of the District Court affirmed.

See Point Second.

Upon perusal of the latter part of the opinion in the Circuit Court, the conclusion cannot be avoided, that, for the moment, the court lost sight of the substantial rule, since, however, more clearly established by this court, stated under Point Second, that the vessel, which, through fault, causes haste, alarm and peril, shall not escape the consequences of such fault by imputing something to another vessel which has been caused by the haste, alarm and peril thus brought about. The maritime law will not tolerate inquiry in favor of a wrong doer, as to even probable error committed by another. It will not countenance the weighing of possible culpabilities, against the ascertained faults of a positive offender, much less the comparison of some shade of imaginable mistake with the transgressions of one absolutely and indefensibly in the wrong. It, most apparently, was a prevailing idea in the Circuit Court, that, if the barque did sheer, division of damages must follow. It is most respectfully claimed that this was fundamental error. To make any vessel wholly or partly responsible, she must commit *a fault.*

To commit a fault is to violate some statute, some rule, some regulation, some duty. To sheer is not a fault; it is an accident. For accident no man is responsible. The actual question in collision cases never is: What was done? It is: Which committed fault? The ascertainment of the facts only aids in arriving at the conclusion, wherein, and what,

and how many were the faults which produced the result. It is of but little, if any, aid to conclude, if this thing or that thing had been done or not done, no collision would have happened. In almost every collision, if anything different had been done, if the most innocent vessel had covered herself with faults, there would have been no collision. That the barque did not sheer has been established, if anything can be established, by weight of evidence, and by physical demonstration, opposed to the mere round assertion of men nearly all interested, and many in error from an ocular deception most naturally explained. But, it is repeated, if the barque did sheer, it is of no consequence with respect to the liability for this calamity. It was no *fault*. It is the idea and language of the opinion delivered at Circuit, that if the barque sheered, it was something the propeller was not bound to guard against. Was not the propeller bound to guard against the natural consequences of the haste, alarm and peril she created? Nay more, was she not bound, under indisputable authority, to so navigate, so obey plain rules, that haste, alarm and peril should not arise?

That the propeller was in fault, guilty—many times guilty; that she violated statute and rule, precedent and reason, has been abundantly established, and was held by both Circuit and District Courts. That she brought about the haste, alarm and peril, in the midst of which this collision took place, cannot be doubted; or, if doubt should arise, it would be instantly dispelled by realization of the haste, the confusion of the moment, which the propeller alone caused, the reiterated orders, the immediate crash of the collision. Can it be that under such circumstances the barque can be

held even partly responsible for the result thus caused? Let it be written across the face of statute, rule and precedent, let it be decided, reported, published, promulgated, that this court will hold, that a vessel offending many times, as this propeller has offended, may divide responsibility for the consequences of her offenses, by raising such feeble doubt, (if any there can be,) as arises in this case, doubt as to something which is not a fault, doubt as to something which at most could be no more than a mistake, an error, an accident, (for no sane man in possession of even the fallible faculties of man, would purposely have thrown his vessel under the very forefoot of this steamer at her full speed,) doubt as to something the natural consequences of her own offenses; and it would be to inflict a blow upon commerce, it is the policy of the law to foster and promote, which, it is no exaggeration to say it could not sustain. Practical men would not risk property and incur the hazards of a hazardous business, beneath rules of such impracticable severity.

GEORGE B. HIBBARD,
For Appellants.

OPINION OF THE CIRCUIT JUDGE.

DAVIS, J.

This case was argued at the last September Term with eminent ability, and for want of time to read the evidence, was taken under advisement. Owing to my official duties in other Circuits and the Supreme Court, I have been unable to consider it until recently. A very decided impression was made on my mind at the argument, which has been confirmed by an examination of the testimony. The result at which I have arrived is different from that of my learned brother, and I therefore state it with diffidence, on account of his superior knowledge and larger experience. As the case wlll doubtless go to the Supreme Court, and as other engagements press heavily on me, I have deemed it necessary only to give my conclusions, and shall not, therefore, analyse the testimony in order to prove their correctness. In all cases of this kind the evidence is conflicting. The rules of navigation, being well settled, are easily applied to the facts in proof; but the difficulty lies in ascertaining the facts.

The propeller Cleveland, owned by the libellants, on her voyage from Ogdensburgh to Chicago, during the night of the twenty-second June, 1866, while in the Detroit River, and near to its mouth, collided with the barque Maria Martin, in tow of the tug McClellan, on their way down the river, and was sunk.

The point to ascertain is, with which party, if either, or both, the fault rests. It is proper to remark, if the night had been dark, and there had been difficulty in discerning objects on the water, some excuse would have been afforded for this collision; but as there was a clear starlight, and the signal lights of all the vessels burned brightly and gave sufficient indications to careful mariners, the accident ought not to have happened. After the propeller entered the river, she steered north by east, and headed

for the Bois Blanc light, and her officers discovered at the distance of about two miles the lights of the tug and tow. It is not important to determine whether the propeller blew her whistle after the first or second whistle of the tug was sounded, for that she understood the signal is evident, because she ported her helm at the distance of half a mile from the tug. She swung to starboard about half a point, and then steadied, the tug being to the westward of her port bow, and there is no evidence that the barque was not then nearly in range with the tug. After the tug blew her whistle she also ported half a point, and then steadied. She was then heading south-west by south ½ south. The propeller pursued her course until she was abreast of the tug—distant about a hundred feet—when her wheel was put hard a port, and she swung to starboard. This change of course was rendered necessary, as the libellants say, because the barque took a sudden sheer to port, shutting out her red light and showing only her green light to the propeller; but if so, it availed nothing, for the bark struck the propeller on her port side as she was swinging to starboard, and she went to the bottom of the river. The libellants do not charge that the tug was in fault, but insist that the propeller was blameless, and that the responsibility for the collision rests wholly with the barque. This position is not well taken. It is clear the collision occurred in a few minutes after the propeller answered the tug's whistle, and that her officers could see, owing to the clearness of the night and the conceded brightness of the lights, that the vessels were in close proximity to each other.

It is equally clear that they knew the Detroit River, on account *of the magnitude of its commerce, and the number of tugs with loaded vessels passing through it, had to be navigated* (to avoid accidents) *with great watchfulness and care*, and that the tug and barque, whose lights they had made, as they were descending the river, *could not be handled*, in case of peril, as well as the propeller could. Notwithstanding these things, we find these officers managing their boat *without regard to the dangers of navigating this river*, and *exercising no more watchfulness than if they had been navigating the open lake*. Although they saw the lights of the tug and barque, and pronounced them to be

very bright, at the distance of two miles, yet they did not change the course of their boat until the tug had signalled them to do it, and at this time the vessels had approached within half a mile of each other. But even then, by the practice of reasonable seamanship, all trouble could have been avoided. If the propeller, instead of porting half a point, or three-fourths even, had gone a point further to the eastward, the collision could not have taken place. There was nothing in the way of her doing this, for the river was wide enough, and there were no lights closing on them from the east.

To put only one hundred feet between her and the tug, when she could, with safety to herself, put a greater distance between them, considering the circumstances of this navigation, was bad seamanship. Watchful and careful officers, having due regard to the rights of persons and property, would not have taken the risk that the officers of the propeller did. They surely risked enough by not changing the course of their boat until she was close on to the tug. Common vigilance required that when they changed the course of the propeller they should have made a more decided change. But these officers, besides not going further to the eastward, were in fault in not checking the speed of their boat. *They should not have entered a narrow river where in the night there is always more or less danger of collision, without materially slackening the speed at which they had been running.*

And this only was the more incumbent on them, because, at so short a distance from the tug and barque, they should, as careful seamen, have apprehended the possibility of danger. It will not do to say, the propeller performed her whole measure of duty, because she safely passed the tug, and that the proximate cause of the collision was the improper handling of the barque. The propeller, having committed faults, cannot go free because the barque also was in fault. It is said the propeller had not a competent look-out, but whether she had or not is immaterial, because this collision was not caused by any omission of duty on his part.

The captain and mate of the propeller, standing abaft the capstan, with the look-out near by, in his proper position, at a distance of two miles discovered the lights of the approaching tug and barque, and from this time forward were in command of the

ship, and needed no information that the look-out could give them. It would have been a useless thing to point out to them the lights, which they saw in good season, and were commenting on as being very brilliant.

After they saw the lights, the responsibility atttaches to them, and, if the ship was afterwards badly managed the lookout is not to blame for it. The next question for solution is, whether the responsibility for this collision rests with the propeller alone, or was the barque in such fault that the damages must be divided. It is plain, notwithstanding the faults of the propeller, that this disaster would not have occurred, had the barque followed, as she was required to do, the course of the tug.* That she did not follow after the tug, but when the propeller was abreast of the tug, sheered to the port of the tug, shutting out from the propeller her red light, and showing only her green light, and continued on in this course until she struck the propeller on her port side, as she was swinging to starboard, is a fact clearly established by the weight of the evidence.†

The current or wind did not cause the sheering, for the barque moved faster than the current, and the wind being south-west, would not cause her to sheer to port, and the officers of the boat say she steered well. It is said, the fault was on the part of the tug, because at the critical moment she altered her course and turned short off to starboard.‡ But the weight of the evidence

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* It is most respectfully claimed that this has nothing to do with the merits of the cause, unless the sheer was a fault. (*See Point Fifth, III.*)

† With great deference it must be insisted, that this conclusion is wrong. Aside from the question as to the weight of evidence, which is really against the conclusion here reached, it was physically impossible that the barque could have sheered. (*See Point Fourth.*) Upon the positive proof of the propeller's own officers (*see accompanying diagram,*) the propeller did not sheer. (*See Point Fourth.*)

‡ It will be permitted me to say that this is entire misapprehension. It was not claimed that it was wrong in the tug to go to starboard. It was her duty most apparently. What was claimed was that the tug's running off to starboard upon a line divergent half a point, while the barque sagged down the stream, caused the same appearance which the vessels would have presented had the tug kept her course and the barque sheered, and that this most natural ocular deception caused such of the witnesses as swore innocently that the barque sheered, to make that mistake; and that this running to starboard of the tug, and sagging down stream of the heavily laden barque, with her deep draught of water, unable as she was to obey her port helm as quickly as did the tug, caused the collision to happen in the precise manner in which it did. (*See Point Fifth, III.*)

is against this view of the case. After the tug blew her whistle, she ported as has been before stated, a half point, and then steadied back on her course, and was pursuing it, when the propeller came abreast of her, and continued in it until after the collision. I agree that it is not easy to reconcile the sheering of the barque, with the testimony of those on board of her, but we are more concerned to know that the sheering *did* occur, than to show *how* it occurred.* There have been many theories on this important question presented for consideration, but I have not time to examine them.† The conduct of the barque was the result of *either mistaking orders or careless management.*‡ We have the testimony of the mate that an important signal was mistaken, and it is not at all unlikely that *the error* in management commenced with this mistake.

It is in proof, that the barque through the night did not steer after the tug, and as she was a good steering vessel, the inference

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* It is most respectfully submitted, that the very opposite of this proposition is the true one. Even if this sheer *did* occur it is but of little consequence. *How* anything occurs in a collision case is of every consequence, for it is in the manner of the occurrence—its cause—that *fault* must exist, or not exist. (*See Point Fifth, III.*)

† Upon the part of the barque there has never been but one theory as to the claim that the barque sheered. The theory maintained by the barque now, was stated in the answer (*page* 14.) There have been many reasons stated why it was impossible for her to have sheered. They are stated upon such ground as that occupied by Mr. Justice SWAYNE in *The Syracuse*, 9 *Wallace*, 672, 677, where he holds that an established physical fact, is worth more than the simple assertion of many witnesses. It is impossible to consider and dispute the views on the part of the barque in this respect. (*See Point Fourth.*) Upon the trial below, upon the part of the propeller no theories were started or considered on this subject. The indulgence of broad assertion that the barque did sheer, took the place of thorough consideration of all the evidence, in its actual significance. It is not theory to advance many reasons why a thing was or was not. It is not theory when demonstration requires the consideration of various things, complex in their nature. An eclipse cannot be calculated by simple processes. To ascertain *how* a collision took place, (and in *how* it took place, in what manner, always lie the very merits of the case, without precise appreciation of which justice cannot be done,) very often indeed absolutely requires investigation conducted in some such manner as an eclipse is calculated. In inquiry thus conducted, there is much more effectual means of arriving at the pure truth, than by counting those who merely assert oftentimes (as did the witnesses in this case, who said the barque sheered,) what thorough and true investigation shows are improbabilities and impossibilities.

‡ If this were so—if it were conceded to be so—yet under the rule referred to under *Point Second* the propeller would be solely responsible. Decided to have committed the many faults she did, it is impossible, under the authorities (most of them cases decided since the decision at Circuit) not to hold the propeller solely responsible.

is plain, that there was a want of proper observation on the part of those who had her in charge. The approach of the propeller was not regarded by her, because the officers of the deck understood the signal of the tug for casting off line instead of an approaching vessel. If a vessel is in tow, she is not therefore excused from keeping close watch, and observing and obeying all signals. The duty of watchfulness was the greater, because the river was full of boats, and light as the night was, there was more necessity for it, than if it had been daylight, but this duty does not seem to have been appreciated by the officers of the barque.*

When the barque made the sudden sheer to port, the propeller not being required to anticipate it did all she could under the circumstances, put her wheel hard a port.

It follows from what has been said, that a decree should be entered, dividing the loss, and it is so ordered.†

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* Even if all these things were conceded to be so, yet what had they to do with the collision?

1. The propeller admits and claims that the barque followed the tug, was right after the tug, when the propeller was abreast of the tug. The propeller has to claim this, else, why did she not sooner change her course and run off towards the Canada channel bank, in the half mile of unobstructed channel there was on that side.

2. *Down to this time then the barque was in no fault,* for she could not be answerable for any thing the tug had before done. (*See Point First.*) At this time the barque was only about 250 feet in space,—the length of a towline,—and say thirteen seconds in time, off. Before this, the propeller had committed, and then was committing, as this opinion plainly holds, fault upon fault. *After this the barque could only commit one error—sheer,*—sheer, as in this opinion is stated, from "mistaking orders or careless management," in the haste, the alarm, the peril, produced by the propeller.

3. The proper order to prevent the barque from sheering was to put the wheel aport; and she was a "good steering vessel." *That order was given* as soon as the tug ported (and the tug only could decide as to that, and if she decided wrongly, which she did not, the barque is not in fault (*Point First,*) *and was heard all around. It was all that could be done, all that "observation" or "close watch" could have pointed out to do.* Whether the order should be mistaken or obeyed, lay with the wheelsman Nothing could help him then if he made mistake. No "observation" or "close watch" could have prevented it. What then, it is most respectfully asked, does all that is said in this paragraph, have to do with the only error that the barque could have committed? (*See Point Fourth.*)

In this opinion, the, so to speak, abject want of a look-out on the propeller—of so important a thing as that—is excused upon the idea that even that absolute destitution of such a necessity, had nothing to do with the collision. May not the barque be permitted to crave slight application of that sound principle if there be the slightest need of its application?

† *See Point Fifth, III.*

OPINION OF THE DISTRICT JUDGE.

MILLER, Dist. J.

For want of time I cannot reduce to paper the substance of the evidence, but after an examination of it I have arrived at the following conclusions:

The channel of the river is about three-fourths of a mile wide, and clear of obstructions. The night was a clear night, without a moon, and at the point of collision the tug Muir was passing up with a tow of five vessels, ahead of the propeller. The lights of the tug and its tow, and of the propeller and tug McClellan and the barque, all burning bright, made a blaze of light nearly equal to that of a clear day.

The propeller passed the tug within one hundred feet, or about that distance.

The propeller made a tug with a tow, as stated in the libel, and was thereby warned that it was coming down stream. And, no doubt, her officers knew that vessels towed down the Detroit River were ladened.

The propeller made the lights of the tug and tow at the point where tugs usually prepare to cut off their tows, and where vessels in tow are making ready to enter Lake Erie, as was the case in this instance.

From the evidence I find that the propeller was in fault.

1. She did not use sufficient caution to avoid a collision.

When the propeller made the lights of the tug and tow, she did not whistle a signal, but delayed until the tug gave the first signal to starboard. She did not go to starboard in time or sufficiently to give the tug and barque a clear berth. The tug gave a second signal to starboard when the propeller was close upon it. The vessels when first seen by the propeller were about two miles off, and making each seven miles an hour, they would meet in nine minutes, and in this time the propeller did not change

her course sufficiently to avoid collision; when the second signal was given the propeller was close on the tug.

2. The captain and lookout stood by the capstan, talking. The captain did nothing, and he was not stationed where the tug's signal could be answered in due time.

3. The propeller had not a look-out of the qualifications required by the rules on that subject. The man who was called a look-out was examined at the hearing, and proved himself to be no sailor, and entirely destitute of the requisite qualifications.

4. The propeller, knowing there was a large (and probably heavily freighted) vessel in tow of the tug, should either have slackened her speed or stopped or gone to starboard in time, and not have forced the tug to sheer off rapidly to starboard to avoid collision.

5. The propeller, knowing that the tug, heading down stream, with a tow, in a two-mile current, could not slacken or back, should have kept out of the way. And the propeller knew that the barque depended upon the tug for her motive power.

6. The theory of the libellant, that an order must have been given to wheelsman of the barque to starboard the helm, and thereby caused the vessel to swing to port, or that the wheelsman had neglected or mistaken the order, cannot be sustained. The wheelsman saw the propeller passing the tug on the port side, swinging to starboard, and it is not presumable that he would run his vessel into her. The men on board the barque prove that orders were given frequently to port, hard to port, and that they were obeyed.

7. The sudden and rapid sheering of the tug left the barque exposed, she not being capable of as quick movement as the tug, and whose tardiness was increased by the long tow-line. The barque would continue on her course with perhaps increased speed. She could not be sheered in time to avoid the collision.

8. The barque was not in fault in not having a special look-out on duty. She had no part in the movements of the tug. The officers on deck were merely to keep the barque in line with the tug.

9. The tug was heading down stream, having the barque in tow by a line three hundred feet long. If the barque steered badly in her course, the tug should have observed the more caution to protect the barque from collision. If there is any fault, it is in the tug.

Libel is ordered to be dismissed.

Running on course one
hour consigned —
Barge running down
Headland going W/

Supreme Court of the United States.

December Term, A. D. 1870.

No. ~~260.~~ 75

JOHN MARTIN *ET AL.*, CLAIMANTS OF BARQUE MARIA MARTIN, *Appellants,*

vs.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO, *ET AL.*, *Appellees.*

IN ADMIRALTY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

BRIEF

By SPALDING & DICKMAN, of Counsel for Libellants and Appellees.

Fairbanks, Benedict & Co., Herald Office, Printers, Cleveland, Ohio.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1870.

JOHN MARTIN *et al.*, Appellants,

vs.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO *et al.*

STATEMENT OF THE CASE.

On the 22d day of June, 1866, at about two o'clock in the morning, the Steam Propeller Cleveland, owned by said Northern Transportation Company, in rounding Bar Point, on Lake Erie, on her way to Detroit, made the lights of a tug and tow, descending the river into Lake Erie, at the supposed distance of two miles. They proved to be the tug George B. McClellan, having in tow the barque Maria Martin, of 568 tons burden, from Chicago bound to Buffalo, laden with thirty-five thousand bushels of corn.

The propeller Cleveland is a vessel of 461 tons burden, and had on at the time, some 290 tons of general merchandise, bound from Ogdensburg N. Y., to Chicago.

At the instant said lights were made by the look-out on the deck of the propeller Cleveland, this last named vessel had just obtained her offing from Bar Point and was put upon her course for Bois Blanc Light, N. by E. Her course had been W. by N. around Bar Point until she brought Bois Blanc Light to bear N. by E. when she at once steered for it. The tug McClellan with the barque in tow, was at this time steering S. S. W. The respective courses were, therefore, one point divergent. The propeller made the red signal light of the McClellan and the red signal light of the barque from a quarter to half a point over her starboard bow. The McClellan made the green light of the propeller one-fourth of a point over her port bow.

It was a bright star light night, with a light wind from S. W. The propeller was running past the land from six to six and a half miles an hour. The tug and tow were at about the same speed. The propeller carried two bright lights at her cross-trees which signified that she was one of the Northern Transportation Company's line. All three of the vessels had their red and green signal lights properly displayed, and they were easily distinguishable. At this time the tug W. K. Muir, with five vessels in tow, the last of which was the schooner Monitor, was slowly ascending the Detroit River a little in advance of the propeller Cleveland and at about the same distance from the eastern or Canada shore.

The barque was towed by means of a seven inch Manilla rope, "payed out" from her starboard bow, say four feet from the bow-sprit, three hundred and sixty feet and made fast to a "Sampson post" in the deck of the tug, about midships, and some twenty-five feet from the "taffrail," over which it played freely, from starboard to larboard, as the tow might sheer on the one hand or the other.

As the vessels approached each other their respective lights closed in until they were running nearly "stem on." At this juncture, and when separated by the supposed distance of three-quarters of a mile, the tug M'Clellan sounded one sharp whistle, and in thirty seconds repeated the whistle as a signal to the propeller that she wished her to pass on her port side. The propeller responded with one blast of the whistle and immediately ported her helm and displayed to the people on board of the tug her red signal light. The tug ported her own helm when she turned half a point and became steady on her course.

The propeller ran past the tug, port side to port side, with a berth, between ships, of at least one hundred feet, but just at the instant in which her stem had passed the stern of the tug, the barque suddenly shut in her red light and showed her green signal light to the people on the deck of the propeller. She had left her line of course and was shooting off to the eastward nearly at right angles with the course of the tug. The consequence was, that, notwi h-

standing the propeller threw her helm "hard-a-port," the barque struck her on the port side, near the fore rigging, and cut her down below the bilge, so that she sank in ten minutes. The barqe drifted with the current from a quarter to half a mile, and then "ran a ground." She had parted the tow rope at the instant of collision and it was hauled in over the port quarter of the tug.

"The propeller, when she sunk, was nearly to the channel bank on the Canadian side." The point of collision was about a mile and a half below Bois Blanc light. When abreast the light the barque had commenced making sail preparatory to hauling in her line and steering her course down the lake. Her mainsail and mainstaysail were set, and they were loosing the jib, when the tug sounded her whistle as a signal to the propeller to take the port side in passing. This signal was misunderstood by the chief mate of the barque, as he himself testifies, and may have led to the disastrous consequences attendant upon the collision.

PLEADINGS AND DECREES IN COURTS BELOW.

THE LIBELLANTS, in the District Court of Wisconsin, who are the owners and freighters of the steam propeller Cleveland, insisted "that the collision aforesaid was occasioned "by the negligence, inattention and want of proper care "and skill on the part of the said barque Maria Martin, her "master, officers and crew, and not from any fault, omission "or neglect of duty on the part of the said propeller, her "master, officers and crew."

The respondents, owners of the barque Maria Martin, in their answer to said libel, claimed that "while the tug and "barque were in their proper places, in the river, lights of "the propeller Cleveland were made, from the barque, "ahead or nearly ahead of the tug, the tug then being "ahead of the barque; the tug blew a single whistle twice, "with a proper interval to show that the two blasts were "not connected, and ported her helm, and the barque ported "her helm, and put her helm hard-a-port, and both swung "to starboard, the tug being the smaller vessel, and with

"much the smaller draft of water, swinging more rapidly "than the barque; that at the time when the helm of the "tug and barque were ported, the tug and the barque were "both in their proper places in the channel and in the river, "and both swung and from thence down to the time of the "collision, continued to swing to the starboard. That the pro- "peller did not slacken her speed but proceeded at an im- "moderate, improper and fast rate of speed; approached the "tug upon a course which brought her too near the said tug, "passed the tug too near and very close to her, and so pro- "ceeded that before the collision, her bow bore a little off "the barque's starbord bow, and a very short time before "the collision the propeller put her wheel aport and threw "her bow across the bows of the barque, and the barque "and the propeller came in collision, striking their port "bows together; that soon after the collision the propeller "sank; that collision happened entirely without any fault, "negligence, carelessness or unskillfulness on the part of "the barque or any of her officers, &c."

From Opinion of Miller, District Judge.

* * * "The channel of the river is about three- "fourths of a mile wide and clear of natural obstructions. "The night was a clear night, without a moon, and at the "point of collision the tug Muir was passing up with a tow "of five vessels *a head of the propeller*. The lights of the "tug and its tow, and the propeller, and the tug McClellan "and the barque, all burning bright, made a blaze of light "nearly equal to that of a clear day. The propeller passed "the tug within *one hundred feet*, or about that distance. "* * * The propeller made the lights of the tug and its "tow at the point where tugs usually prepare to cast off "their tows, and where vessels in tow are making ready to "enter Lake Erie, *as was the case in this instance.* From "the evidence, I find that the propeller was in fault. She "did not use sufficient caution to avoid collision. The ves- "sels, when first seen by the propeller, were about two "miles off and making, each, seven miles an hour. They "would meet in nine minutes, and in that time the propel-

"ler did not change her course sufficiently to avoid collision. "* * * The sudden and rapid sheering of the tug, left "the barque exposed, she not being capable of as quick "movement as the tug, and her tardiness was increased "by the long tow-line. The barque would continue on her "course with perhaps increased speed. She could not be "sheered in time to avoid collision. * * * The barque "was not in fault in not having a special "look out" on "duty. * * * The officers on deck were merely to keep "the barque in line with the tug. LIBEL DISMISSED."

From the Opinion of Mr. Justice Davis in U. S. Circuit Court.

* * * * "The result at which I have arrived is dif- "ferent from that of my learned brother. In all cases of "this kind the evidence is conflicting. The rules of naviga- "tion being well settled, are easily applied to the facts in "proof, but the difficulty lies in ascertaining the facts. * "* * After the propeller entered the river she steered "North by East and headed for the Bois Blanc light, and "her officers discovered at the distance of about two miles "the lights of the tug and tow. It is not important to de- "termine whether the propeller blew her whistle *after the* "*first or second whistle of the tug was sounded*, for that she "understood the signal is evident, because she ported her "helm *at the distance of half a mile from the tug.* She "swung to starboard about half a point and then steadied, "the tug being to the westward of her port bow. And "there is no evidence that the barque was not then nearly "in range with the tug. After the tug blew her whistle, "she also ported half a point and then steadied. She was "then heading South-west by South half South. The pro- "peller pursued her course until she was abreast of the "tug—distant about one hundred feet—when her wheel "was put hard-a-port and she swung to starboard. This "change of course was rendered necessary, as the Libel- "lants say, because the barque took a sudden sheer to port, "shutting out her red light and showing only her green "light to the propeller, but, if so, it availed nothing, for

"the barque struck the propeller on her port side, as she "was swinging to starboard, and she went to the bottom of "river. * * * * It is plain, notwithstanding the faults "of the propeller" (in not slacking her speed and in not "going further to the Eastward,) "that this disaster would "not have occurred had the barque followed as she was re- "quired to do, the course of the tug. That she did not "follow after the tug, but, when the propeller was abreast "the tug, sheered to the port of the tug, shutting out from "the propeller her red light and showing only her green "light, and continued on this course until she struck the "propeller on her port side as she was swinging to starboard, "*is a fact clearly established by the weight of the evidence.* "* * * * It is said the fault was on the part of the tug "because, at the critical moment, she altered her course "and turned short off to starboard. But the weight of the "evidence is against this view of the case. After the tug "blew her whistle she ported, as has been before stated, "half a point and then steadied back on her course and "was pursuing it when the propeller came abreast of her, "and continued in it until after the collision. I agree that "it is not easy to reconcile the sheering of the barque with "the testimony of those on board of her, but *we are more* "*concerned to know that the sheering did occur, than to* "*show how it occurred.* * * * * The conduct of the "barque was either the result of mistaking orders, or care- "less management.

"It follows, from what has been said, that a decree should "be entered dividing the loss, and it is so ordered."

From this last decree, dividing the damages, the respondents below, claimants of the barque, have appealed to this tribunal and hence the question to be solved, is this alone, "Was the "Maria Martin" in fault?" For the order of the Circuit Court will be affirmed unless it shall satisfactorily appear from the pleadings and testimony that the mismanagement of the "Cleveland" was the sole cause of the collision.

For the appellees, owners of the propeller Cleveland and others, we take the following positions and cite the evidence in support of them:

1. The proximate cause of the collision was the sudden and unexpected sheering of the barque Maria Martin to the Eastward, while the propeller was in the act of passing the tug with a reasonable berth between them.

This is clearly proved by witnesses whom we may suppose to be disinterested, as they were not attached to either one of the colliding vessels.

See printed record, page 31. PATRICK H. O'NEAL: "In 1866, I was master of the schooner Monitor, I recollect the night of the collision between the barque Maria Martin and the propeller Cleveland. I was then on the Monitor and she was the last vessel in the tow of the W. K. Muir. * * * I had turned in, leaving my first mate, Mr. Bell, on deck; was woke up by some noise; went on deck immediately and got on top of the cabin; saw the "Martin," she just passed us. After she passed us I thought she swung to port; answered her starboard helm; at that time I thought the propeller ported her wheel and swung to starboard. I saw them strike at an angle of 45°, hitting the propeller on her port side, near the foremast. When I came on deck the barque seemed to be following the tug, or, if anything, swinging to port a little. I thought the barque continued to swing to port up to the time of collision. She shut out the tug from my sight before the collision."

Ibid, page 33. PETER BELL: "I had charge of the Monitor's deck at the time of the collision between the barque and the propeller. *It occurred about astern of us;* it might have been one-quarter of a point on our port quarter, but I think it was just about astern of us, as near as possible, in a straight line. The "Martin" passed us about two hundred feet off, I should call it. They (the tug and tow) were about in a straight line in passing, but I think the barque was a little the nearest to us. When the tow passed us the "Cleveland" (propeller) was astern, a little on our port quarter. At the time the barque hit the propeller the

latter was heading kind of an angle-way toward the Canada shore. She was hit by the barque on the port side, aft the foremast, at an angle of 40° or 45°, I should think. The barque was paying off to port when she hit the propeller, *just as if her wheel was put to starboard.* At the time of collision I could not see the tug; she was shut in by the mainsail or main-staysail of the barque. When the collision happened the barque was three or four hundred feet astern of us. I could see plain enough. We were just on the point of picking up a vessel that was at anchor at Malden, and were going a mile or a mile and a half an hour by the land when the barque passed us."

Ibid, page 37, JOHN P. YOUNG: "I was master of the tug McClellan at the time of the collision. * * Left the deck at 12 o'clock, something woke me up and I came out on deck—just out of my room door on the port side some twenty-five feet from the stem of the tug. The propeller was then abreast of us, I should think, one hundred feet off. * * When I looked aft I saw the vessel (the barque) heading right for the propeller. She was sheering to port. When the barque struck she was heading well off to the eastward, about across our stern as well as I could see. I could see the whole of the barque's starboard side from where I stood. When the propeller passed us she was sheering off to starboard. When she sunk, she was nearly to the channel bank on the Canadian side. After the barque got clear of the propeller, she drifted a little below her and got aground. I made a statement, the same day, before the Inspectors of the port of Detroit, and the following is an extract:

"Propeller shut in her green light and showed her red "light after answering our second whistle; the propeller "and tug passed each other about one hundred feet apart. "As the propeller passed us, the vessel (the barque) was "heading to the eastward, nearly *at right angles with the* "*tug* as she was heading at the time S. W. by S. half South."

Ibid, page 34, PETER H. YOUNG: "I am the brother of the master; I was on the tug and on duty as a "look out" at the time of the collision. When I first saw the "Cleve-

land" she bore about a point or a point and a half on our port bow, and about a mile and a half or two miles off. She was showing first two bright lights. The first colored light I saw was a green light; then a red light; she passed on our port side about one hundred feet off, I should judge. About the time the propeller passed us, I saw the "Martin" sheering from our port quarter towards the propeller; she was sheering a good deal, I could not tell exactly how much, about five or six points; almost broadside to the stern of the tug. * * * She was off on our port quarter when the collision occurred. I do not think any part of her was astern of us."

Ibid, page 26, JOSEPH BYRON: "I was mate of the tug McClellan at the time of the collision. My watch commenced at twelve o'clock. I saw the lights of the propeller about three or four minutes before the collision. While passing the tow of the W. K. Muir I saw the green and bright lights of the propeller. They bore one quarter of a point off our port bow, and were distant a mile or three-quarters of a mile perhaps. We were then just at the Muir's tow. I blew one whistle and ported half a point. I blew a second whistle which she answered, and right away, shut in her green light and showed us her red signal light. She was then one quarter of a mile off. The propeller passed us nearly 100 feet on our port hand. As she passed us I saw the barque sheering off to the eastward. We were then heading S. W. by S. half S. The barque was heading to the Canada shore. She struck the propeller on her port side near midships. The tow line parted when they struck. When we passed the Muir's tow we were heading S. S. W.; after changing my course to S. W. by S. half S. we kept right on in that direction until the collision. I signed the statement made before the Inspectors of the port of Detroit the following day, alluded to by Capt. Young. I was standing all this time on top of the pilot house where I could see the compass. If the barque had followed in the line of the tug there would have been no collision, in my judgment."

Ibid, page 30, PETER MCGRATH: "I was second Engineer of the tug McClellan and was on duty at the time of the collision. * * When we blew our second whistle the propeller ported. I was standing at the engine door on the port side. She came along all right and passed us about 100 feet off. After the propeller had gone about half the length of the tow line, I saw that the barque must collide with her; the barque was heading off to the port hand of the tug all of three points, I should judge; when they struck, the barque was to the port side of the line of the tow. * * I mean that the stern of the barque was in our wake when I say she lay off our port side. When the propeller was abreast of us she was not swinging, but after she passed and before the collision, she swung towards the Canada shore, I should think, as much as two points. After the collision the barque ran aground."

Ibid, page 36, BERNARD CARROL: "I was fireman, on duty on tug McClellan at the time of collision. I saw the red and bright lights of the propeller over our port bow; cannot say how far off she was; she was not far; I was standing on deck, on the port side, and about midships, when I first saw the lights, and stood there until after the collision. The propeller passed about 100 feet off. When the propeller's stern was abreast of our stern, I looked aft and saw the "Martin" and she was then sheering to port; I cannot say how many points; she was sheering considerably and continued to sheer until she struck the propeller."

Ibid, page 44, FRANCIS HONER: (Deposition taken by Claimants.) "I was wheelsman on the tug McClellan, and was at the wheel at the time of collision. The propeller answered our second whistle, and as she approached I saw her red signal light. I saw no other colored light on her. When the order was given to port, *I ported half a point and then steadied her on her course.* It was S. S. W. When I steadied the tug on her course, the propeller was just clearing our stern. We passed the propeller 100 feet off. She came *square past us* until she got about amidships, then she swung to starboard. I then opened pilot-house door and looked out. The "Martin" was then sheered off

to our port hand and they were making canvass on her. They came together about 100 feet to the port of the line of our tug. Our course by the compass was S. S. W., but after porting half a point it was S. W. by S. half S. We ran on that course until the propeller was abreast of us, then I steadied her back on her course. I did not change the course of the tug after the Cleveland first came in sight until she passed us except to port half a point and then steady her.

Ibid, page 29, JOHN M. HUNTER: "I was Chief Engineer on the tug McClellan at the time of the collision. I had turned in about one o'clock. Something disturbed me and I came on deck a little after 2 o'clcok. My room was amidships, on the port side, the door opening out aft. When I came out, I saw what I took to be the vessel (the barque) *on our port quarter* and the line gone or slacked down into the water. She was heading off to the eastward probably three or four points. I judged in part from her tow line, *which was about ten feet from where it would be usually.* She was more than her width to the port of the line of the tow, and her bow most to port."

Here we have eight witnesses, all of whom saw the vessels collide, and without a dissenting voice, they affirm that, from some cause, the barque turned from her line of course after the tug "to port" or toward the Canada shore, just before the collision. No one of these men, be it remembered, was on board the barque or the propeller.

We will now introduce the contradictory statements of the two Mates of the colliding vessels, and in the light of the foregoing evidence, rest the solution of the important question "did the sudden and unexpected sheering of the barque to the left of her line of course, bring her in contact with the propeller, when, if she had followed her tug, they would have passed each other in safety?"

Printed Record, page 64, RICHARD DAVIS: "I was mate of the propeller Cleveland, and my watch commenced on the night of the collision at 12 o'clock. Our course after rounding Bar Point was N. by E. for Bois Blanc light. I made the lights of the tug and tow a little off our starboard bow,

say two miles distant, Their red signal lights were plainly distinguishable. We kept our course N. by E. When within half or three-quarters of a mile of the tug and tow, the tug signified to us, by one whistle, that she wished us to pass on the port side. We answered with one whistle and ported our helm. When within one hundred and fifty or two hundred feet of the tug, and her light bearing off our port bow, we steadied the propeller and passed her, giving her a berth of 150 feet, as I judged. At the time the order to "steady" was given, the barque was showing her red light and appeared to be very nearly in range with the tug, but, if any thing, a little on her port quarter. As we were passing the stern of the tug, we discovered that the barque was shutting in her red light and displaying to us her green light. She was sheering in towards the Canada shore. The wheel of the propeller was immediately thrown over so as to put the helm hard-a-port, and as she was swinging to starboard the barque struck her on her port side near the rigging. I was thrown overboard from the top of the pilot house. The Captain and the "lookout" were standing on deck well forward near the capstan. We were running six or six and a half miles an hour past the land. The collision occurred below the entrance into the river. The mouth of the river is the entrance between Bois Blanc Island and the main land, as I understand it."

Ibid, page 78, JAMES COLLINS: "I was mate of the barque Maria Martin, and was on deck at the time of the collision with the propeller Cleveland. The length of the barque is 200 feet and she had 60 fathoms (360 feet) of line out. The Captain called me to the deck about a quarter of an hour before the collision, to make sail on the vessel. All hands were called. As a general thing the tugs cast off the lines two and a half or three miles below Bois Blanc light. Sometimes they do not tug so far if the wind is down the river. The place where we were was a proper place to make sail. We had a light breeze from South West, and it was a clear, star-light night. When we passed Bois Blanc light we were in the center of the channel and *right after the tug.* We passed a tow of four or five vessels

that were going up. They were on our port hand one hundred and twenty feet, I should say, from us when abreast. When we passed that tow we were in the center of the channel and right after the tug. When this tow was abreast of the tug, I first saw the lights of what proved to be the propeller Cleveland coming up. I saw the red light, the green light and the white light. They bore right ahead and we were, then, *right after the tug.* They did not appear to be over a quarter of a mile off. The propeller kept right on, heading for the tug, a little on the tug's starboard bow. When within thirty or forty feet the tug blew one whistle. I told the men all "to go forward"—that one whistle is, "take in your tow-line." I understood the whistle was for casting off the line. If cast off, I should give the vessel *a starboard helm* and that would *sheer us to port.* We had up our main stay sail and main sail and were loosing the jibs. We were passing the last vessel in the Muir's tow (the Monitor) when I first saw the propeller's lights. Before my men had all got forward, the tug blew a second whistle. The propeller was then a little on the starboard bow of the tug *closing in her green light.* The tug then run out on our starboard bow from two to two and a half points. As the propeller passed the tug, I could see her red light and green light. She shut her green light in just as she passed the bow of the tug; she was about abreast of the tug when we saw her red light and green light. She came right straight along, showing all her lights, ½ to ¾ of a point off our starboard bow. When close to our jib-boom she swung off to her starboard, shutting off her starboard light and showing her red light. Our helm was put hard to port when the tug blew her second whistle and we were swinging to starboard when the barque struck the propeller on her port bow; she glanced along until we came about her midships, and fastened into her. Our port bow struck her. The tow-rope broke when the vessels came together." * * *

There can be no room for doubt that the barque, from some cause, took a wild sheer to the Eastward, and out of the line of her course after the tug, at about the instant of

time when the propeller passed the tug. If so, she brought about the collision and was emphatically in fault.

2. The barque was in fault in this, that she had not a special look-out stationed forward, to keep watch for vessels and to give timely notice of their approach.

"When I am towing down the river my usual look-out is "an officer, sir. I do not have a special look-out besides "the Mate. * * * The tug keeps look-out for the "vessel." Capt. Trotter, printed record, page 105.

In this instance, the Mate was left the principal executive officer on the deck of the barque, and as he was engaged in making sail, with all hands called for that purpose, he did not know that the propeller was in sight until the barque was abreast, the Monitor, the last vessel in the Muir's tow—printed record, page 88. "The collision "occurred 400 or 500 feet astern of us." PETER BELL, mate of the Monitor, printed record, page 34. Then the propeller was within 500 feet when this watchful officer first discovered her in a blaze of light bearing dead ahead of the tug, his own vessel following directly after the tug. Page 89.

How important in this condition of things, that the signals thrown out by the tug should not be misunderstood by the Executive Officer of the tow! "One whistle" indicated that each vessel should *turn to the right*. The propeller and tug did each turn to the right and passed each other in safety. Which way did the barque turn? Let the testimony answer.

In Sproul vs. Hemmingway, 14 Pickering, 1. Mr. Chief Justice Shaw says: * * * "On board the ship towed "astern by means of a cable something may and ought to "be done by the Master and crew, in steering, *keeping* "*watch*, observing and obeying orders and *signs*, and if "there be any want of care and skill in the performance of "these duties, and damage ensue, the damage is attributa- "ble to the Master and crew of the towed ship, and they "and their owners must sustain it."